

**2001 DRAFTING REQUEST****Bill**Received: **02/09/2002**Received By: **kunkemd**Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**By/Representing: **Adam**This file may be shown to any legislator: **NO**Drafter: **kunkemd**May Contact: **Legislative Council (John Stolze**

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Submit via email: **YES**Requester's email: **adam.korhitz@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Senate task force on telecommunications issues

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 02/14/2002	csicilia 02/15/2002	haugeca 02/15/2002	_____	lrb_docadmin 02/15/2002		State
/P2	kunkemd 02/16/2002	hhagen 02/17/2002	jfrantze 02/18/2002	_____	lrb_docadmin 02/18/2002		State
/1	kunkemd	jdyer	pgreensl	_____	lrb_docadmin	lrb_docadmin	State

02/19/2002 01:45:40 PM

Page 2

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	02/18/2002	02/19/2002	02/19/2002	_____	02/19/2002	02/19/2002	

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At intro.

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PA: Email "1" to

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Adam Korbitz  
in Sen. Jauch's  
office.

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1P2 hmk 2/17  
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CMA

FE Sent For:

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## SENATE TASK FORCE ON TELECOMMUNICATIONS ISSUES

### Final Recommendations for Telecommunications Reform – Senator Bob Jauch

#### Outline of Working Concepts

#### I. WHOLESALE SERVICE QUALITY

The goal should be to achieve the same degree of seamless integration and ease of consumer movement in the local telephone market as is currently experienced in the long-distance market. No one can plausibly suggest that we have achieved that yet. Therefore, the *long-term goal* should be that it is just as easy to switch from CLEC to CLEC or from CLEC back to ILEC as it should be to switch from a large ILEC to a CLEC. A degree of parity should be achieved across the industry to achieve the desired degree of seamless integration and ease of consumer movement.

##### Proposal:

1. Add the following language to the **prohibited practices** section of 196.219(3):

Fail to provide wholesale services to telecommunications providers on the same terms and conditions as the telecommunications utility or telecommunications provider provides to itself or any of its affiliates, unless such terms and conditions violate federal law.)

2. In addition, **define wholesale services** in sub (3) above as follows:

Wholesale services include, but are not limited to, pre-ordering; ordering and provisioning; maintenance and repair; network performance; unbundled elements; operator services and directory assistance; system performance; service center availability; and billing.

→ OSS docket

3. **PSC Direction**—include in (3)(n) proposed above—[NEW]

The commission may, by order, establish additional or different wholesale services subject to this paragraph and

exemption from 227

shall issue its first order no later than 90 days after the effective date of this paragraph. After the initial order, the commission may also implement this paragraph by rule.

The Commission may issue an order that sets standards to ensure nondiscriminatory and reasonable wholesale service and that includes self-executing remedy payments that a telecommunications utility must pay to the state or to another telecommunications provider upon the utility's failure to comply with those standards. No later than 90 days after the effective date of this paragraph, the Commission shall, by order, establish minimum wholesale service standards applicable to telecommunications utilities in this state with respect to the following: 1. timely provisioning of services or facilities; 2. trouble report rate; 3. repeat trouble report rate; 4. trouble report rate within first 30 days of new service; and 5. timely repair of service outages. This order may include self-executing monetary remedies payable by the utility to the state, or to the other telecommunications provider receiving such wholesale services, for failure to meet minimum standards.

The Commission may, on its own motion or upon petition, issue an order exempting a telecommunications utility from minimum wholesale service standards and remedies or establishing different minimum wholesale service standards or remedies if the Commission has found, after notice and hearing, that such an exemption is in the public interest and the utility has not violated this section, a provision of the Telecommunications Act of 1996, a rule or order issued under the Telecommunications Act of 1996, or a provision of an interconnection contract approved under the Telecommunications Act of 1996.

**Note:** providing for both rule and order permits flexibility. Rules in longer term will implement established telecommunications basics. Order power allows PSCW to move quickly to promote or protect competition minimums in an industry that moves faster than a rulemaking typically allows.

4. "Remedy Plan" power—underscore added to existing statute.

196.37(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or

in issues

An order against a  
telcomp order rules -  
the PSC may also

otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future, and may determine and order monetary compensation to the commission or other persons for failure to comply.

require  
the TP to

"assessment"?

call Ed Marion

limit to  
telecommunications

not pecuniary  
losses  
(which wd  
require  
proof  
docs)

## II. INTERCONNECTION, COLLOCATION AND NETWORK ELEMENTS

Incorporate section 24 of LRB 4151/2 and any other relevant sections to create interconnection, collocation and network elements standards for large price-capped utilities.

relationship  
to  
wholesale  
stds

## III. BUSINESS LINES & FRESH LOOK

Once wholesale standards and remedies are in place, allow for a process similar to 196.195 by which the incumbent can petition the PSC to lift the price caps on three and fewer business lines within a specific geographic area, dependent upon the incumbent demonstrating that effective competition exists in that market. PSC could not lift price caps in a market absent a showing of effective competition.

can't  
lift price  
caps until

defined by PSC  
already  
current  
law?  
See  
196.195

Customers with one to three business lines in a market where PSC lifts the price caps would enjoy a one-year fresh look period that would coincide with lifting of the price caps. Customer can only terminate a contract if the customer enters into another contract with another telecom provider. Fresh look would not apply to areas where the price caps are not lifted, or to customers with more than three lines. Further, specify that the incumbent's petition for price cap relief would constitute a waiver of any contractual rights relating to the fresh-look period. Absent such a waiver, PSC could not grant price cap relief.

(196.195)

## IV. RURAL TELECOMMUNICATIONS INVESTMENT PLAN

A. Adopt a modified form of SB 355/AB 662. Incorporate the following general restrictions:

1. Small telcos and coops would have five years to take advantage of these provisions (except for loan guarantees, which would be for the life of the loan, provided loan is

patronage  
capital

applies to  
price regulated  
US  
→  
common  
PSC to investigate  
(from docket)  
- initiate  
docket  
but price  
caps can't be  
lifted until  
wholesale  
stds & remedies  
in place

PSC - a geog. area  
eligible  
for price  
caps  
- incumbent  
can petn for  
relief, which  
is a waiver  
- allow to  
form w/o  
penalty

taken out before sunset). Otherwise, provisions would sunset after five years.

2. Could be allowed only for telecommunications ventures. Need to define telecommunications in such a way that it does not include cable television.

3. Would be required to waive both state franchise protection and the federal rural exemption in order to use provisions.

4. Subsidies would be capped at a certain percentage of retained earnings (150%), and that percentage would decrease in equal amounts each year for five years, until after five years we are back at 100% (for example, 140% the fourth year, 130% the third year, etc.).

- a. For coops, rather than defining retained earnings = patronage capital, simply have a separate provision allowing coops to commit an equal percentage of patronage capital, in a manner similar to that used for for-profits.

- B. Small telcos and coops would be specifically allowed to do only the following:

1. Guarantee loans exceeding 100% of retained earnings or patronage capital. Guarantee would be for the life of the loan, if taken out before the five-year sunset. Guarantee would be subject to the percentage limit on retained earnings or patronage capital.

2. HOCOM-LOCOM would be required only for asset transfers over a certain dollar limit (\$500,000).

3. Competitive ventures would not have to pay ILEC for specified intangibles, such as goodwill or use of name.

- C. Allow for a mechanism by which an ILEC that finds itself competing with a competitive venture can match the prices of its competitor, TSLRIC notwithstanding. Can only match competitors price, and if competition disappears, must petition PSC to raise prices again.

DSC already requires those 2 waivers

47 USC 251f

- guaranteed loans

471 includes coops

196.204

196.50(c)(b) (barrier to competition)

can go above retained earnings

AI TS

196.204 (13)

except from 196.204 (1)

- must use actual cost, not market value

- doesn't want against RE exemption

- create exception to 196.204(15)

even if below costs

V. PRICE CAP – SERVICE QUALITY PENALTY

LPR TUs

✓ Increase the service-quality penalty on large price-capped telecommunications companies from 2% to 10% as per section 6 of LRB 4151/2.

VI. RETAIL SERVICE QUALITY

When it comes to retail service quality, Ameritech stands out in a number of respects. The company's history of retail service quality problems is entirely unique, and there is evidence to believe it is a problem of a cyclical nature. On the other hand, it is true Ameritech has made recent and significant improvements in retail service quality.

While Ameritech should not be punished for past mistakes – or for mistakes it *might* make in the future – it would be imprudent given the company's history of service quality problems not to grant some limited protection to the Ameritech consumer over and above what exists now.

It must also be recognized that Ameritech is, in many respects, a *de facto* monopoly, at least in the residential service market. Therefore, it makes sense to consider an approach that phases out standards and penalties over time, and that ensures that the PSC has adequate tools to deal with future problems with any telecommunications provider on a case-by-case basis. Ultimately, competition and meaningful consumer choice should be the guarantor of retail service quality. However, as demonstrated by the problems Ameritech experienced during the year 2000, we are not at that point yet.

Proposal: Create mandatory retail standards and customer credits for large price-capped telecommunications companies, but only for the following:

LPR TUs

1. delays in installing service
2. delays in repairing service
3. missed appointments

not all  
of  
CAUS  
proposal

To this extent, incorporate sections 11, 12, 13, 14, 15, 18, 19 and any other relevant sections of LRB 4151/2.

These standards would sunset after five years, unless the PSC determined that such a sunset would not be in the public interest.

↓  
what is public interest?



*provider*  
PSC would have authority to apply these standards to any telecommunications carrier on a complaint basis, if the public interest required it.

*own motion or complaint by anybody - don't have to have a Htg;*

## VII. SLAMMING AND CRAMMING

Incorporate provisions of LRB 2638/2 to prohibit various slamming and cramming practices.

*PSC can determine not to have a Htg*

## VIII. FIVE-YEAR PSC REVIEW OF THE STATUS OF TELECOM COMPETITION

After five-year period, require the PSC to review the status of telecommunications competition in Wisconsin and make recommendations to the legislature.

The purpose of the report and recommendation would be to assess the current regulatory framework and recommend changes, if necessary. The report, if submitted, must assess all aspects of regulation and all providers. The report must consider the following nonexclusive list of factors:

- whether anti-competitive behavior by any telecommunications provider poses an unreasonable barrier to the development of an effectively competitive local telecommunications market, and whether the legislature should consider structural separation among other potential remedies.
- The current state of competition in local telecommunications service markets
- differences in the level of regulation applied to incumbent local carriers, competitive local carriers, cable, and wireless service providers
- number of local service providers (incumbent, CLEC, cable and wireless) in relevant product and geographic markets in Wisconsin; compare to national data
- market power of the incumbent local carriers, competitive local carriers, cable, and wireless service providers in relevant product and geographic markets in Wisconsin; compare to national data
- prices of local service within each relevant product and geographic market charged by each provider (incumbent, CLEC, cable and wireless) in Wisconsin, compared to the national averages

*HOLD OFF until later*

- comparison of retail service quality credit plans offered by each provider (incumbent, CLEC, cable and wireless); also compare to plans offered elsewhere in the nation

total  
complaints  
(  
"justified"  
= fault  
of  
provider  
not  
utility

- comparison of number of **both** raw and "justified" residential customer complaints to the PSC related to poor service, cramming and slamming for each provider (incumbent, CLEC, cable and wireless)

- availability, price and quality of unbundled network elements, interconnection and collocation as well as remedy plans associated with such wholesale services

relating  
back  
to  
other  
parts  
of  
proposal

- barriers to entry into relevant product and geographic local telecommunications markets

## IX. DEFINITION OF EFFECTIVE COMPETITION

Create a measurable definition of competition and a process to determine when competition exists in a given market, similar to the process set forth in 196.195. Definition would have both qualitative (subjective) and quantitative (objective) elements, and the process would vest considerable discretion in the expertise of the PSC.

Stans

-4912/P1

## 2001 SENATE BILL 408

SA✓

insects

djs

January 30, 2002 - Introduced by Senator ROBSON, cosponsored by Representative POWERS. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

gen cat

gen cat

1 AN ACT ~~to renumber and amend 196.194 (1); to amend 196.195 (5), 196.196~~

2 (1) (c) 1., 196.196 (1) (e) 2., 196.196 (3) (a), 196.196 (3) (b), 196.196 (5) (b) 5. and  
3 196.204 (3); and ~~to create~~ 196.01 (3j), 196.025 (1m), 196.194 (1) (b), 196.196 (6)  
4 (title), 196.196 (6) (a), 196.196 (6) (b), 196.196 (6) (c), 196.196 (6) (d), 196.196  
5 (6) (e), 196.196 (6) (f), 196.196 (6) (g), 196.196 (6) (h), 196.196 (7), 196.196 (8),  
6 196.196 (9), 196.197, 196.1995, 196.219 (3m) and 196.662 of the statutes;

7 relating to: regulation of ~~and enforcement against~~ large price-regulated  
8 telecommunications utilities, ~~termination of certain telecommunications~~  
9 ~~contracts~~ telecommunications unbundling and interconnection requirements,  
10 providing an exemption from emergency rule procedures, granting  
11 rule-making authority, and <sup>making an appropriation</sup> ~~providing penalties~~.

certain

telecommunications providers including

## Analysis by the Legislative Reference Bureau

This bill makes changes to the regulation of "large price-regulated telecommunications utilities." The bill defines a "large price-regulated telecommunications utility" as a telecommunications utility that had more than 500,000 access lines in use in this state at the time that the utility elected to become

INSERT 1A ✓

## SENATE BILL 408

price regulated. Under current law, "price regulation" is a form of regulation that is based on the prices of services offered by a telecommunications utility, instead of the utility's rate-of-return, which is the traditional basis for regulating public utilities.

1 The bill does all of the following, which are described below: ~~(1) establishes retail and wholesale service standards for large price-regulated telecommunications utilities; (2) creates interconnection, collocation, and network elements requirements; (3) under certain circumstances, requires a large price-regulated telecommunications utility to structurally separate its retail and wholesale operations; (4) changes the formula for determining the price increases that a large price-regulated telecommunications utility is allowed to make; and (5) makes various other changes to the regulation of large price-regulated telecommunications utilities.~~

2 ~~INSERT 2A~~

***Retail and wholesale service quality***

The bill requires a large price-regulated telecommunications utility to comply with monthly standards regarding retail and wholesale service quality. The retail standards consist of the following: 1) deadlines for initiating service after orders are received; 2) deadlines for restoring service outages; 3) requirements for minimizing repeat problem reports regarding access lines; 4) requirements for keeping installation and repair appointments; and 5) requirements regarding service center response times. The wholesale standards consist of the following: 1) deadlines for restoring service outages; 2) deadlines for filling orders from wholesale customers; 3) requirements for minimizing repeat problem reports regarding access lines used by wholesale customers; and 4) requirements for minimizing problems with orders made by wholesale customers. A large price-regulated telecommunications utility must make monthly reports to the public service commission (PSC) regarding compliance with the retail standards and monthly reports to the utility's wholesale customers regarding compliance with the wholesale standards.

If a large price-regulated telecommunications utility that has not structurally separated (as described below) violates a retail service standard in a month, the PSC must directly assess against the utility a forfeiture of between \$2,000,000 and \$6,000,000, depending on the number of standards that are violated. However, the bill allows the PSC to assess a smaller forfeiture that reflects the severity of the violation. A smaller forfeiture may be no less than 50% of the amount otherwise required. In addition, the PSC must promulgate rules that establish a range for the smaller forfeitures.

If a large price-regulated telecommunications utility that has not structurally separated violates a wholesale service standard in a month, the utility must pay compensation to the affected wholesale customer of between \$200,000 to \$1,000,000, depending on the the number of standards that are violated and the severity of the violation. Under certain circumstances, the amount of compensation must be doubled.

The bill also allows a large price-regulated telecommunications utility to petition the PSC to waive the requirement to pay a forfeiture or compensation. The PSC is allowed to waive the requirement if the large price-regulated telecommunications utility demonstrates that the utility's violation of a retail or

**SENATE BILL 408**

wholesale service standard was caused by a natural disaster, act of God, military action, war, insurrection, or riot.

***Interconnection, collocation, and network elements***

The bill creates various requirements for large price-regulated telecommunications utilities regarding interconnection, collocation, and network elements. The bill defines a "network element" as a facility or equipment used to provide telecommunications service. These requirements relate to the duty of a telecommunications utility under federal law to interconnect its facilities and equipment to other telecommunications providers. "Collocation" refers to the placement of a telecommunications provider's facilities and equipment at the premises of a telecommunications utility for the purpose of interconnection. Collocation may be physical, in which facilities and equipment are actually placed at the utility's premises, or collocation may be virtual, which is the functional equivalent of physical collocation, but without the actual placement of facilities and equipment at the utility's premises.

The bill requires a large price-regulated telecommunications utility to provide interconnection, collocation, and network elements in a manner that promotes the maximum development of competitive telecommunications service offerings in this state. Also, a large price-regulated telecommunications utility must provide interconnection, collocation, and network elements in a manner specified by a telecommunications provider if that manner is technically feasible. In addition, the rates at, and terms and conditions on, which a large price-regulated telecommunications utility provides physical or virtual collocation of any type of equipment for interconnection with, or access to the network elements of, the utility or any collocated telecommunications provider at the utility's premises, must be just, reasonable, and nondiscriminatory.

The bill also requires a large price-regulated telecommunications utility to provide, upon request, for cross-connects between the facilities or equipment of collocated telecommunications providers that are the most reasonably direct and efficient, as determined by the collocated telecommunications provider. Also upon request, a large price-regulated telecommunications utility must provide for cross-connects between the facilities or equipment of a collocated telecommunications provider and the network elements platform or transport facilities of a noncollocated telecommunications provider. (A "network elements platform" is the sum of the various constituent network elements of the utility.) A large price-regulated telecommunications utility must provide either type of cross-connect in a manner that is consistent with safety and network reliability standards.

Also, a large price-regulated telecommunications utility must, as requested by a telecommunications provider, provide network elements on a bundled or unbundled basis at rates, and on terms and conditions, that are just, reasonable, and nondiscriminatory. Although not defined in the bill, it is understood in the telecommunications industry that "bundled" network elements are those that are not separated from other network elements, and "unbundled" network elements are those that are separated from other network elements. The network elements must

**SENATE BILL 408**

be provided at any point that the telecommunications provider determines is technically feasible and provided in a manner that allows the telecommunications provider to combine the network elements to provide new or existing telecommunications service. Unless directed by a telecommunications provider, a large price-regulated telecommunications utility is not allowed to require a wholesale customer to purchase network elements on an unbundled basis if the utility ordinarily combines the elements to provide service to the utility's own end-user customers. The bill defines "end-user customer" as a person who receives local exchange service, but does not resell the service or use the service to provide telecommunications service to another person. Also, as requested by a telecommunications provider, a large price-regulated telecommunications utility must combine any sequence of network elements that the utility ordinarily combines for itself.

In addition, a large price-regulated telecommunications utility may not require that a telecommunications provider purchase other network elements or retail services of the utility if the telecommunications provider uses the network elements platform of the utility that consists solely of combined network elements and the use is for the purpose of providing telecommunications service to an end-user customer. Other requirements apply to the use of a network elements platform, including the requirement that a large price-regulated telecommunications utility must provide the platform without any disruption of services to end-user customers.

Finally, the bill requires the PSC to issue an order establishing a compliance plan for each large price-regulated telecommunications utility that includes standards for the utility to provide nondiscriminatory access to the utility's services and network elements to the utility's wholesale customers. The plan must also include procedures for measuring the utility's compliance with the standards and requirements for the utility to make specified monetary payments to a wholesale customer if the utility fails to comply with a standard. The PSC must issue the order no later than nine months after the effective date of the bill.

***Separation of wholesale and retail affiliates***

The bill requires the PSC to order a large price-regulated telecommunications utility to structurally separate its wholesale and retail operations into separate affiliates if, in any consecutive 24-month period after the effective date of the bill, the utility has three or more violations of specified requirements under state or federal law, including the interconnection, collocation, and network elements requirements described below. The PSC must also issue such an order if, after two years after the effective date of the bill, less than 50% of the residential or business access lines in the utility's service territory receive local exchange service from another telecommunications provider. In addition, the PSC must issue such an order if it makes other specified findings regarding the market power of the large price-regulated telecommunications utility or if the PSC finds that the utility's competitors are not able to obtain equal and reliable access to the utility's unbundled network elements or operational support systems.

**SENATE BILL 408**

A large price-regulated telecommunications utility that is ordered to structurally separate must satisfy certain requirements, including the following: 1) the retail and wholesale affiliates must have separate officers, directors, employees, and publicly traded stock; 2) no more than 50% of the publicly traded stock of the wholesale affiliate may be owned by persons that are affiliated with the retail affiliate; 3) the retail and wholesale affiliates must operate independently of each other, maintain separate books, records, and accounts, and conduct business between each other on an arm's length basis; 4) the retail affiliate must use the same operational support system interfaces that the wholesale affiliate makes available to unaffiliated telecommunications providers; 5) the retail and wholesale affiliates may not obtain credit under any arrangement that permits a creditor, upon default, to have recourse to the assets of the utility or another affiliate of the utility; 6) the retail and wholesale affiliates may not discriminate between another affiliate of the utility and any other person in providing or procuring goods, services, facilities, or information; and 7) the wholesale affiliate may not transfer any network element to any retail affiliate of the utility.

The bill allows the PSC to approve a transition plan submitted by a large price-regulated telecommunications utility for phasing in the utility's compliance with an order to structurally separate. Also, the bill allows a large price-regulated telecommunications utility voluntarily to structurally separate, subject to the PSC's approval.

***Price increase formula***

Under current law, a price-regulated telecommunications utility may increase its service rates according to a formula that is based on annual changes in the gross domestic product price index (GDPPI). Under the formula, the change in the revenue weighted price indexes for all services that are subject to price regulation may not exceed the difference between the most recent annual change in GDPPI and an offset percentage. In addition, the offset percentage is subject to the following: 1) a penalty adjustment that increases the offset percentage for inadequate service or insufficient investment by a telecommunications utility; and 2) an incentive adjustment that decreases the offset percentage for encouraging infrastructure investment by a telecommunications utility.

The amount of the offset percentage and the penalty and incentive adjustments depend on the size of a telecommunications utility. For a large price-regulated telecommunications utility, the offset percentage is 3%, which is subject to a penalty adjustment that may not exceed 2% and an incentive adjustment that may not exceed 2%. The PSC is required to promulgate rules that establish the penalty and incentive adjustments.

This bill changes the penalty adjustment to the offset percentage for large price-regulated telecommunications utilities. Under the bill, the penalty adjustment may not exceed 10%.

***Other changes***

~~The bill also does all of the following:~~

1. ~~The bill allows the PSC to take various enforcement actions against a large price-regulated telecommunications utility that violates a requirement~~

## SENATE BILL 408

Mandatory credits

administered by the PSC, including ordering the utility to pay damages to a person who is injured by the violation. The bill also allows the PSC or a court to assess a forfeiture for such a violation of between \$25,000 and \$250,000. (This forfeiture authority does not apply to violations of the retail service standards, which are subject to the forfeitures described above.)

and The bill requires a large price-regulated telecommunications utility to issue credits to end-user customers if the utility fails to satisfy requirements regarding each of the following: 1) disruption of service; 2) failure to install local exchange service; 3) failure to keep service or repair appointments; ~~4) printed directory mistakes, and 5) directory assistance mistakes.~~ The amount of a credit depends on the type of requirement and whether a residential or business telephone line is affected.

Same #  
INSERT 6A  
3. The bill allows a customer of a large price-regulated telecommunications utility to terminate, without penalty, a contract with the utility for local exchange service, but only if the customer terminates the contract because the customer enters into another contract with another telecommunications provider. The deadline for terminating a contract is the first day of the 25th month beginning after the bill's effective date. The right to terminate does not apply to a wholesale customer of a large price-regulated telecommunications utility.

4. The bill requires the PSC, in making all telecommunications-related decisions and orders, to promote the availability of high-quality telecommunications services at reasonable rates, facilitate the development of competitive markets for local telecommunications services, protect the public against monopolies, and ensure the effective regulation of large price-regulated telecommunications utilities that have control or market power over essential telecommunications facilities.

5. The bill specifies the circumstances under which the PSC must advise against the federal communications commission's approval of a petition filed by a large price-regulated telecommunications utility for interlata long distance authority.

6. The bill provides that, if a large price-regulated telecommunications utility files a petition with the PSC that the utility's rates are not just and reasonable, the utility rescinds its election to be price regulated and the PSC must impose cost-based, rate-of-return regulation on the utility.

7. The bill prohibits a large price-regulated telecommunications utility from imposing or assessing a charge or fee, or otherwise seeking payment or requiring compensation from any person for the installation, construction, extension, or use of telecommunications facilities, equipment, or infrastructure, related to a real estate development.

8. The bill allows a person to bring an action for damages for an injury caused by a large price-regulated telecommunications utility's violation of a requirement administered by the PSC.

INSERT 6B: see LRB-2638/2 except, attached ✓



## SENATE BILL 408

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INSERT 7-1

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

(to  
separate  
the SF  
tag from  
rest of  
analysis)

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT 7-2

see LRB-2638/2  
excerpt

SECTION 1. 196.01 (3j) of the statutes is created to read:

196.01 (3j) "Large price-regulated telecommunications utility" means a telecommunications utility that had more than 500,000 access lines in use in this state at the time of electing to become price-regulated.

SECTION 2. 196.025 (1m) of the statutes is created to read:

196.025 (1m) In making all telecommunications-related decisions and orders, including rate setting and rule-making orders, the commission shall promote the availability of high quality telecommunications services at reasonable rates, facilitate the development of competitive markets for local telecommunications services, protect the public against monopolies, and ensure the effective regulation of large price-regulated telecommunications utilities that have control or market power over essential telecommunications facilities.

SECTION 3. 196.194 (1) of the statutes is renumbered 196.194 (1) (a) and amended to read:

196.194 (1) (a) Approval. Except as provided in this subsection paragraph, nothing in this chapter prohibits the commission from approving the filing of a tariff which permits a telecommunications utility to enter into an individual contract with an individual customer if substitute telecommunications services are available to customers or potential customers of the telecommunications utility and the absence of such a tariff will cause the telecommunications utility to be disadvantaged in competing for business. A tariff filed under this subsection paragraph shall include

## SENATE BILL 408

## SECTION 3

the condition that any such contract shall be compensatory as determined under s. 196.204 (5) and (6). The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this subsection paragraph or an amendment to such a contract has been executed, the telecommunications utility shall submit to the commission written notice of the general nature of the contract and the parties to the contract. Upon request, the commission shall inform a person, or direct that the person be informed, that notice has been received by the commission of execution of a contract under this subsection paragraph. Within 6 months after receiving substantial evidence that a contract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the telecommunications utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.

SECTION 4. 196.194 (1) (b) of the statutes is created to read:

196.194 (1) (b) *Right to terminate certain contracts.* 1. In this paragraph:

a. "Contract" means a contract between a telecommunications provider and a person for the telecommunications provider to provide local exchange service to the person.

b. "Customer" means a person who enters into a contract with a telecommunications provider, but does not include a wholesale customer, as defined in s. 196.197 (1) (f).

c. "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

**SENATE BILL 408**

1           2. Notwithstanding any provision in a tariff filed under par. (a), no later than  
2           the first day of the 25th month beginning after the effective date of this subdivision  
3           .... [revisor inserts date], a customer may terminate, without penalty, a contract  
4           entered into before the effective date of this subdivision .... [revisor inserts date], with  
5           a large price-regulated telecommunications utility before the expiration of the  
6           contract if the customer terminates the contract because the customer enters into a  
7           contract with another telecommunications provider. Termination of a contract under  
8           this subdivision is effective when the large price-regulated telecommunications  
9           utility receives oral or written notice from the customer.

10           3. A large price-regulated telecommunications utility for which a contract is  
11           terminated under subd. 2. may not remove, alter, or render unusable any network  
12           element, as defined in s. 196.196 (7) (a) 1., used to serve the customer who terminated  
13           the contract, except in accordance with generally recognized telecommunications  
14           industry engineering standards that relate to the safe, economical, or efficient use  
15           or operation of the network element.

16           **SECTION 5.** 196.195 (5) of the statutes is amended to read:

17           196.195 (5) COMMISSION ACTION. If after the proceedings under subs. (2), (3), and  
18           (4) the commission has determined that effective competition exists in the market  
19           for the telecommunications service which justifies a lesser degree of regulation and  
20           that lesser regulation in that market will serve the public interest, the commission  
21           may, by order, suspend any of the following provisions of law, except as provided  
22           under subs. (7) and (8): ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s. 196.07; s.  
23           196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s.  
24           196.194 (1) (a); s. 196.196 (1) or (5); s. 196.20; s. 196.204 (7); s. 196.21; s. 196.22; s.

## SENATE BILL 408

1 196.26; s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s.  
2 196.77; s. 196.78; s. 196.79; and s. 196.805.

3 SECTION 6. 196.196 (1) (c) 1. of the statutes is amended to read:

4 196.196 (1) (c) 1. A price-regulated telecommunications utility may not  
5 increase its rates for services under par. (a), except for basic message  
6 telecommunications service, for a period of 3 years after electing to become price  
7 regulated. Following the initial 3-year period for services under par. (a), except for  
8 basic message telecommunications service, and at any time for basic message  
9 telecommunications service, a price-regulated telecommunications utility may  
10 increase its rates for those services to the extent that the change in the revenue  
11 weighted price indices does not exceed 2 percentage points less than the most recent  
12 annual change in the gross domestic product price index, as published by the federal  
13 government. The commission shall, by rule, create a penalty mechanism for up to  
14 a one percentage point increase in the percentage offset for inadequate service  
15 provided by or insufficient investment made by a price-regulated  
16 telecommunications utility. The commission shall, by rule, create an incentive  
17 mechanism for up to a one percentage point decrease in the percentage offset to  
18 encourage infrastructure investment by the price-regulated telecommunications  
19 utility. For a ~~large price-regulated~~ telecommunications utility <sup>plain</sup> with more than  
20 500,000 access lines in use in this state at the time of electing to become price  
21 regulated, the percentage offset to the change in the gross domestic product price  
22 index shall be 3 percentage points and, the penalty mechanism shall be up to a 10  
23 percentage point increase, and the incentive mechanism shall be up to a 2 percentage  
24 points point decrease. No earlier than 6 years after September 1, 1994, and no more  
25 frequently than every 3 years thereafter, the commission may, following notice and

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INSERT 11-9

1 an opportunity for hearing, by rule increase or decrease the gross domestic product  
2 price index percentage offset by a maximum of one percentage point in any 12-month  
3 period to reflect any statewide changes in the productivity experience of the  
4 telecommunications industry. The commission shall promulgate rules to identify the  
5 factors that the commission may consider in determining changes in the productivity  
6 experience of the telecommunications industry. If application of the price regulation  
7 index formula achieves a negative result, prices shall be reduced so that the  
8 cumulative price change for services under par. (a), including prior price reductions  
9 in these services, achieves the negative result.

10 SECTION 7. 196.196 (1) (c) 2. of the statutes is amended to read:

11 196.196 (1) (c) 2. Annual permitted price increases under this paragraph may  
12 be deferred and accumulated for a maximum of 3 years into a single increase. The  
13 first permitted increase after the telecommunications utility elects to become price  
14 regulated shall be limited by the most recent annual change in the gross domestic  
15 product price index, less 2 percentage points, plus or minus any penalty or incentive  
16 adjustment. For a large price-regulated telecommunications utility ~~with more than~~  
17 ~~500,000 access lines in use in this state~~, the first permitted increase shall be limited  
18 by the most recent annual change in the gross domestic product price index, less 3  
19 percentage points, plus or minus any penalty or incentive adjustment. The increase  
20 in any rate element may not at any time exceed 10% or the increase in the gross  
21 domestic product price index, whichever is greater.

22 SECTION 8. 196.196 (3) (a) of the statutes is amended to read:

23 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.  
24 196.19 (1m), 196.194, 196.195, ~~196.197~~ 196.1995, 196.20 (1m), 196.204, 196.209,  
25 and 196.219, the commission may not have jurisdiction over the prices or terms and

## SENATE BILL 408

conditions for the offering of any other services, including new telecommunications services, offered by a price-regulated telecommunications utility.

SECTION 9. 196.196 (3) (b) of the statutes is amended to read:

196.196 (3) (b) A price-regulated telecommunications utility shall file tariffs with the commission for the provision of any telecommunications service, whether or not the service is otherwise subject to this chapter. Except as provided in s. ss. 196.20 (2) (am) and 196.662 (1) (b) 2., changes in the terms and conditions of tariffed services under par. (a) shall be effective one day after filing with the commission, unless the tariff specifies a later effective date.

SECTION 10. 196.196 (5) (b) 5. of the statutes is amended to read:

196.196 (5) (b) 5. For a large price-regulated telecommunications utility with more than 500,000 access lines in use in this state at the time of electing to become price-regulated, a level of planned investment in an amount of not less than \$700,000,000 within the first 5 years of the plan.

SECTION 11. 196.196 (6) (title) of the statutes is created to read:

196.196 (6) (title) MANDATORY CREDITS.

SECTION 12. 196.196 (6) (a) of the statutes is created to read:

196.196 (6) (a) *Definitions.* In this subsection:

1. "Customer" means any person, including a telecommunications provider, that uses the services, products, or facilities provided by a ~~large price-regulated~~ telecommunications utility.

2. "End-user customer" means a person that receives local exchange service from a ~~large price-regulated~~ telecommunications utility or another telecommunications provider, and that does not resell the local exchange service or use such service to provide telecommunications service to any other customer.

## SENATE BILL 408

13

13-1

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4 8. "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

SECTION 13. 196.196 (6) (b) of the statutes is created to read:

196.196 (6) (b) *Service disruptions*. 1. If the local exchange service of an end-user customer is disrupted by a ~~large price-regulated~~ telecommunications utility and remains disrupted for more than 24 hours after the disruption is reported to the ~~large price-regulated~~ telecommunications utility, the utility shall issue a credit in an amount specified in subd. 2. to the end-user customer unless one of the following applies:

a. The disruption is caused by the end-user customer or the end-user customer's telecommunications equipment.

b. The disruption is caused by a natural disaster, act of God, military action, war, insurrection, or riot.

c. The end-user customer fails to keep an appointment to repair the disruption and the utility is not able to obtain access to repair the disruption.

2. If service is disrupted for 24 hours or more, the amount of the credit under subd. 1. shall be \$35 for each primary residential line, \$5 for each other residential line, \$135 for each main billing business line, and \$25 for each other business line, for each 24-hour period, or portion of a 24-hour period, in which service is disrupted.

SECTION 14. 196.196 (6) (c) of the statutes is created to read:

196.196 (6) (c) *Failure to install local exchange service*. 1. Except as provided in subd. 2., if a ~~large price-regulated~~ telecommunications utility fails to install local exchange service or related equipment within 5 business days after an end-user customer places an order for the service or equipment, the ~~large price-regulated~~ telecommunications utility shall issue a credit to the end-user customer in an amount equal to \$35 for each residential line and \$135 for each business line for each

## SENATE BILL 408

1 business day, or portion of a business day, beyond the 5th business day that the  
2 service or equipment is not installed.

3 2. Subdivision 1. does not apply to any of the following:

4 a. The installation of service in an undeveloped area where there are no  
5 telecommunications facilities.

6 b. A failure to install that is caused by a natural disaster, act of God, military  
7 action, war, insurrection, or riot.

8 c. A failure to install resulting from the end-user customer voluntarily  
9 changing the installation date without providing notice 48 hours before the  
10 originally scheduled installation date.

11 SECTION 15. 196.196 (6) (d) of the statutes is created to read:

12 196.196 (6) (d) *Failure to keep appointments.* 1. A ~~large price-regulated~~  
13 telecommunications utility shall do all of the following:

14 a. Except as provided in subd. 2., if the utility fails to keep an appointment to  
15 install service or make on-premises or outside repairs for an end-user customer,  
16 issue a \$35 credit for each residential line and a \$135 credit for each business line  
17 that is affected by the failure.

18 b. Inform an end-user customer about the utility's obligation to issue a credit  
19 under subd. 1. a. at the time an appointment is made.

20 2. Subdivision 1. a. does not apply if the ~~large price-regulated~~  
21 telecommunications utility provides the end-user customer with 24-hour advance  
22 notice that the utility is not able to keep the appointment or if a natural disaster, act  
23 of God, military action, war, insurrection, or riot prevents the utility from keeping  
24 the appointment.

25 SECTION 16. 196.196 (6) (e) of the statutes is created to read:



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1 196.196 (6) (e) *Printed directory mistakes*. If directory information pertaining  
2 to an end-user customer is stated incorrectly in, or erroneously omitted from, a  
3 printed telephone directory published by a large price-regulated  
4 telecommunications utility, the utility shall issue a credit to the end-user customer,  
5 unless the large price-regulated telecommunications utility demonstrates to the  
6 satisfaction of the commission that the mistake was caused by the end-user  
7 customer. The utility shall issue a credit for each local line used by the end-user  
8 customer, except that if the end-user customer uses more than 3 local lines the utility  
9 shall issue credits for only 3 of the lines. The credit for each line shall be equal to 3  
10 times the sum of the end-user customer's local line rate and, if applicable, the  
11 average monthly usage rate for the line at the time of the mistake. This paragraph  
12 does not apply to telephone directories that are printed before the effective date of  
13 this paragraph .... [revisor inserts date].

14 SECTION 17. 196.196 (6) (f) of the statutes is created to read:

15 196.196 (6) (f) *Directory assistance mistakes*. If a large price-regulated  
16 telecommunications utility fails to include an end-user customer's directory  
17 information accurately in directory assistance, the large price-regulated  
18 telecommunications utility shall issue a \$35 credit for each residential line and a  
19 \$135 credit for each business line for each 5-business-day period, or portion of  
20 5-business-day period, after the date that the large price-regulated  
21 telecommunications utility is notified about the failure, unless the large  
22 price-regulated telecommunications utility demonstrates to the satisfaction of the  
23 commission that the failure was caused by the end-user customer.

24 SECTION 18. 196.196 (6) (g) of the statutes is created to read:

## SENATE BILL 408

196.196 (6) <sup>g</sup> ~~g~~ Credit procedure. 1. If a ~~large price-regulated~~ telecommunications utility is required to provide a credit to an end-user customer under this subsection, the ~~large price-regulated~~ telecommunications utility shall issue the credit by adjusting the end-user customer's first bill following the event for which the credit is required.

2. Except for an end-user customer report under par. (b) 1., a ~~large price-regulated~~ telecommunications utility may not require an end-user customer to provide any notice as a condition for issuing a credit required under this subsection. INSERT 16-10 ✓

SECTION 19. 196.196 (6) <sup>h</sup> ~~g~~ of the statutes is created to read:

196.196 (6) <sup>g</sup> ~~h~~ Other remedies available. The remedies under this subsection are not exclusive. INSERT 16-12 ✓

SECTION 20. 196.196 (7) of the statutes is created to read:

196.196 (7) SEPARATION OF WHOLESALE AND RETAIL AFFILIATES. (a) Definitions.

In this subsection:

1. "Network element" means a facility or equipment used to provide telecommunications service. "Network element" includes features, functions, and capabilities that are provided by means of such a facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for bills or collections, or that are used in transmitting, routing, or otherwise providing telecommunications service.

2. "Retail affiliate" means an affiliate through which a large price-regulated telecommunications utility provides telecommunications services to retail customers.

## SENATE BILL 408

1           3. “Wholesale affiliate” means an affiliate through which a large  
2 price-regulated telecommunications utility provides telecommunications services  
3 and network elements to other telecommunications providers, including the utility’s  
4 retail affiliates.

5           (b) *Mandatory structural separation.* The commission shall, after notice and,  
6 if requested, a hearing, order a large price-regulated telecommunications utility to  
7 structurally separate its wholesale and retail operations into separate affiliates as  
8 provided in par. (d) if any of the following occurs:

9           1. The utility has had, in any consecutive 24-month period after the effective  
10 date of this subdivision ... [revisor inserts date], 3 or more of any one or combination  
11 of the following:

12           a. A violation of s. 196.219 (3).

13           b. A violation of s. 196.1995.

14           c. A violation of s. 196.03 (1) in which the utility failed to provide reasonably  
15 adequate service or facilities on a timely basis to a wholesale customer, as defined  
16 in s. 196.197 (1) (f).

17           d. A finding by the commission under s. 196.199 (3) (a) 2. that the utility failed  
18 to comply with an interconnection agreement.

19           e. A finding by the commission that the utility failed to negotiate in good faith  
20 under 47 USC 252 (a) (1).

21           f. A violation of the federal Telecommunications Act of 1996 or an order or  
22 regulation of the federal communications commission issued or promulgated under  
23 that act.

24           2. The commission finds that, after 2 years after the effective date of this  
25 subdivision .... [revisor inserts date], less than 50% of the residential access lines, or

**SENATE BILL 408**

1 less than 50% of the business access lines, in the utility's service territory receive  
2 local exchange service from another telecommunications provider.

3 3. The commission finds any of the following:

4 a. The utility has the ability to maintain prices below cost, or above competitive  
5 price levels, for a significant period of time.

6 b. The utility's competitors are not able to obtain equal and reliable access to  
7 the utility's unbundled network elements or operational support systems.

8 c. The utility exercises market power in a manner that precludes the  
9 development of substantial and sustainable competition.

10 (c) *Voluntary structural separation.* Subject to the approval of the commission,  
11 a large price-regulated telecommunications utility may structurally separate its  
12 wholesale and retail operations into separate affiliates as provided in par. (d).

13 (d) *Requirements for structural separation.* For a large price-regulated  
14 telecommunications utility to structurally separate under par. (b) or (c), all of the  
15 following requirements must be satisfied:

16 1. The utility's wholesale affiliate must have officers, directors, employees, and  
17 publicly traded stock that are entirely separate from the officers, directors,  
18 employees, and publicly traded stock of the utility's retail affiliate.

19 2. No more than 50% of the publicly traded stock of the utility's wholesale  
20 affiliate may be owned by persons that are affiliated with the utility's retail affiliate.

21 3. The utility's retail and wholesale affiliates must operate independently of  
22 each other.

23 4. The utility's retail and wholesale affiliates must maintain separate books,  
24 records, and accounts.

## SENATE BILL 408

1           5. The utility's retail and wholesale affiliates must conduct all business  
2 between each other on an arm's length basis, reduce all transactions between each  
3 other to writing that is available for public inspection, and account for all such  
4 transactions in accordance with accounting principles specified or approved by the  
5 commission.

6           6. The utility's retail affiliate must use the same operational support system  
7 interfaces that the utility's wholesale affiliate makes available to unaffiliated  
8 telecommunications providers.

9           7. Any other requirement specified by the commission must be satisfied.

10          (e) *Transitional plans.* The commission may approve a transitional plan  
11 submitted by a large price-regulated telecommunications utility that specifies a  
12 reasonable schedule for phasing in the utility's compliance with an order under par.

13 (b) or for voluntary structural separation under par. (c), except that, after 3 years  
14 after the effective date of this paragraph .... [revisor inserts date], a wholesale  
15 affiliate of a utility that structurally separates under par. (b) or (c) may not market,  
16 offer, or provide any retail telecommunications service or related feature to any retail  
17 customer.

18          (f) *Prohibitions.* 1. A wholesale or retail affiliate of a large price-regulated  
19 telecommunications utility may not do any of the following:

20           a. Obtain credit under any arrangement that permits a creditor, upon default,  
21 to have recourse to the assets of the utility or another affiliate of the utility.

22           b. Discriminate between another affiliate of the utility and any other person  
23 in providing or procuring goods, services, facilities, or information.

24           2. A wholesale affiliate of a large price-regulated telecommunications utility  
25 may not transfer any network element to a retail affiliate of the utility.

**SENATE BILL 408**

**SECTION 21.** 196.196 (8) of the statutes is created to read:

196.196 (8) CONSULTATION WITH FEDERAL COMMUNICATIONS COMMISSION. (a) In this subsection, "end-user customer" has the meaning given in sub. (6) (a) 2.

(b) If the federal communications commission consults with the commission under 47 USC 271 (d) (2) (B), the commission shall advise against approving the petition of a large price-regulated telecommunications utility for interlata long distance authority if either of the following applies:

1. For a utility that has not structurally separated under sub. (7) (b) or (c), less than 25% of the utility's access lines serving residential end-user customers in the utility's service territory, or less than 25% of the utility's access lines serving business end-user customers in the utility's service territory, receive basic local exchange service from another telecommunications provider.

2. The commission determines that the utility has failed to meet the requirements of 47 USC 271 (c).

**SECTION 22.** 196.196 (9) of the statutes is created to read:

196.196 (9) JUST AND REASONABLE RATES: EFFECT OF PETITION. A large price-regulated telecommunications utility may petition the commission for a determination that its rates, as established under this section, are not just and reasonable. By filing such a petition, a large price regulated telecommunications utility rescinds its election to be price regulated and the commission shall impose cost-based, rate-of-return regulation on all products and services offered by the utility. A large price-regulated telecommunications utility may not elect to be price regulated within 3 years after filing a petition under this subsection.

**SECTION 23.** 196.197 of the statutes is created to read:

**SENATE BILL 408****196.197 Retail and wholesale telecommunications service quality. (1)**

DEFINITIONS. In this section:

(a) "End-user customer" has the meaning given in s. 196.196 (6) (a) 2.

(b) "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

(c) "Network element" has the meaning given in s. 196.196 (7) (a) 1.

(d) "Repeat trouble report" means a trouble report made by an end-user customer or wholesale customer within 30 days after a large price-regulated telecommunications utility has resolved a problem regarding the same access line in response to a prior trouble report by the customer.

(e) "Trouble report" means a report by an end-user customer to a large telecommunications utility or wholesale customer, or by a wholesale customer to a large price-regulated telecommunications utility, about a problem regarding the end-user customer's access line or an access line used by the wholesale customer.

(f) "Wholesale customer" means a telecommunications provider that uses the services, products, or facilities of a large price-regulated telecommunications utility to provide telecommunications service to an end-user customer.

(2) RETAIL SERVICE STANDARDS. In addition to any standard required by the commission or agreed to by a large price-regulated telecommunications utility, a large price-regulated telecommunications utility shall, on a monthly basis, comply with each of the following standards in providing telecommunications services, products, or facilities to its end-user customers:

(a) *Initiation of service.* The utility shall begin providing local exchange service for 95% of the orders for such service by the utility's end-user customers no less than 5 business days after receiving an order.

## SENATE BILL 408

## SECTION 23

1 (b) *Service outages.* The utility shall restore no less than 95% of local exchange  
2 service outages to end-user customers within 24 hours after an end-user customer  
3 reports the outage to the utility.

4 (c) *Repeat trouble reports.* The utility shall ensure that no more than 10% of  
5 all trouble reports are repeat trouble reports.

6 (d) *Missed repair appointments.* The utility shall keep no less than 90% of all  
7 appointments scheduled to install service or make repairs for the utility's end-user  
8 customers, excluding those appointments for which the utility gives 24-hour  
9 advance notice that the appointment will be missed. The commission shall  
10 promulgate rules to administer the requirements of this paragraph.

11 (e) *Service center response times.* The utility shall ensure that in no less than  
12 90% of all calls by end-user customers to the utility's service center the customer is  
13 connected to a live service representative within 20 seconds after the call begins.

14 (3) **WHOLESALE SERVICE STANDARDS.** In addition to complying with any standard  
15 required by the commission or agreed to by a large price-regulated  
16 telecommunications utility, a large price-regulated telecommunications utility  
17 shall, on a monthly basis, comply with each of the following standards in providing  
18 telecommunications services or products or network elements to each of its wholesale  
19 customers:

20 (a) *Service outages.* The utility shall restore no less than 95% of service outages  
21 affecting end-user customers with access lines used by the wholesale customer  
22 within 24 hours after the wholesale customer reports the outage to the utility.

23 (b) *Response to orders.* Except as provided in par. (c), the utility shall ensure  
24 that no less than 95% of the wholesale customer's orders for unbundled loops,



## SENATE BILL 408

1 unbundled network platforms, or resale are filled within 5 business days after the  
2 utility receives an order.

3 (c) *Response to orders with agreed delivery times.* If the utility and a wholesale  
4 customer agree upon a time other than 5 business days for filling an order for  
5 unbundled loops, unbundled network platforms, or resale, the utility shall ensure  
6 that no less than 95% of such orders are filled within the agreed time.

7 (d) *Repeat trouble reports.* The utility shall ensure that no more than 10% of  
8 all trouble reports about the utility's access lines that are used by the wholesale  
9 customer are repeat trouble reports.

10 (e) *Order problems.* The utility shall ensure that, for no less than 90% of all  
11 orders for unbundled loops, unbundled network platforms, or resale, a wholesale  
12 customer does not report a problem about the order to the utility during the 7-day  
13 period beginning after the date on which the order is filled.

14 (4) FORFEITURES; COMPENSATION. (a) *Retail service.* 1. If a report filed under  
15 sub. (5) (a) 1. demonstrates, or if the commission otherwise determines, that a large  
16 price-regulated telecommunications utility that has not structurally separated  
17 under s. 196.196 (7) (b) or (c) has failed to comply with a standard under sub. (2), the  
18 commission shall, except as provided in par. (d), directly assess against the utility the  
19 following forfeitures:

- 20 a. If the utility fails to meet one of the standards in a month, \$2,000,000.  
21 b. If the utility fails to meet 2 of the standards in a month, \$3,000,000.  
22 c. If the utility fails to meet 3 of the standards in a month, \$4,000,000.  
23 d. If the utility fails to meet 4 of the standards in a month, \$5,000,000.  
24 e. If the utility fails to meet 5 of the standards in a month, \$6,000,000.

## SENATE BILL 408

## SECTION 23

1           2. Notwithstanding subd. 1., the commission may assess a forfeiture that is less  
2           than an amount specified in subd. 1. which reflects the severity of the large  
3           price-regulated utility's failure to comply with a standard under sub. (2). The  
4           commission shall promulgate rules establishing the range of forfeitures that the  
5           commission may assess under this subdivision. The lowest forfeiture in such a range  
6           may be no less than 50% of the amount specified in subd. 1.

7           3. A large price-regulated telecommunications utility against whom the  
8           commission assesses a forfeiture under subd. 1. shall pay the forfeiture to the  
9           commission within 10 days after receipt of notice of the assessment or, if the utility  
10          petitions for judicial review under ch. 227, within 10 days after receipt of the final  
11          decision after exhaustion of judicial review. The commission shall remit all  
12          forfeitures paid under this subdivision to the state treasurer for deposit in the school  
13          fund. The attorney general shall bring an action in the name of the state to collect  
14          any forfeiture assessed by the commission under subd. 1. that has not been paid as  
15          provided in this subdivision. The only contestable issue in such an action is whether  
16          or not the forfeiture has been paid.

17          (b) *Wholesale service.* A large price-regulated telecommunications utility that  
18          has not structurally separated under s. 196.196 (7) (b) or (c) shall, except as provided  
19          in par. (d), compensate a wholesale customer the following amounts if the utility's  
20          monthly report under sub. (5) (a) 2. to that wholesale customer demonstrates that  
21          the utility has failed to comply with a standard under sub. (3) with respect to that  
22          wholesale customer:

23           1. If the utility fails to meet one of the standards in a month:

24           a. If the utility fails to comply with the standard by not more than 5%, \$200,000.

**SENATE BILL 408**

1           b. If the utility fails to comply with the standard by more than 5% but not more  
2 than 10%, \$300,000.

3           c. If the utility fails to comply with the standard by more than 10%, \$400,000.

4           2. If the utility fails to meet 2 of the standards in a month:

5           a. If the utility fails to comply with both of the standards by not more than 5%,  
6 \$300,000.

7           b. If the utility fails to comply with at least one of the standards by more than  
8 5% but not more than 10%, and if subd. 2. c. does not apply, \$400,000.

9           c. If the utility fails to comply with at least one of the standards by more than  
10 10%, \$500,000.

11          3. If the utility fails to meet 3 of the standards in a month:

12          a. If the utility fails to comply with all 3 of the standards by not more than 5%,  
13 \$500,000.

14          b. If the utility fails to comply with at least one of the standards by more than  
15 5% but not more than 10%, and if subd. 3. c. does not apply, \$600,000.

16          c. If the utility fails to comply with at least one of the standards by more than  
17 10%, \$700,000.

18          4. If the utility fails to meet 4 of the standards in a month:

19          a. If the utility fails to comply with all 4 of the standards by not more than 5%,  
20 \$700,000.

21          b. If the utility fails to comply with at least one of the standards by more than  
22 5% but not more than 10%, and if subd. 4. c. does not apply, \$800,000.

23          c. If the utility fails to comply with at least one of the standards by more than  
24 10%, \$900,000.

25          5. If the utility fails to meet 5 of the standards in a month:

## SENATE BILL 408

## SECTION 23

1 a. If the utility fails to comply with all 5 of the standards by not more than 5%,  
2 \$800,000.

3 b. If the utility fails to comply with at least one of the standards by more than  
4 5% but not more than 10%, and if subd. 5. c. does not apply, \$900,000.

5 c. If the utility fails to comply with at least one of the standards by more than  
6 10%, \$1,000,000.

7 (c) *Doubling of compensation.* The compensation that a large price-regulated  
8 utility must pay to a wholesale customer for a month under par. (b) shall be doubled  
9 if the utility has failed to comply with 2 or more standards under sub. (3) with respect  
10 to that wholesale customer in each of the preceding 3 months or in any 6 of the  
11 preceding 12 months. If compensation payable to a wholesale customer for a month  
12 is doubled under this paragraph, the doubling shall continue in each succeeding  
13 month until the utility complies with at least 4 of the standards under sub. (3) with  
14 respect to that wholesale customer for 3 consecutive months.

15 (d) *Waiver.* No later than 30 days after filing a report under sub. (5) (a), a large  
16 price-regulated telecommunications utility may petition the commission to waive a  
17 requirement to pay a forfeiture or compensation under par. (a) or (b). The  
18 commission may waive the requirement if the large price-regulated  
19 telecommunications utility demonstrates to the satisfaction of the commission that  
20 the utility's failure to comply with a standard under sub. (2) or (3) was caused by  
21 natural disaster, act of God, military action, war, insurrection, or riot.

22 (5) **REPORTS.** (a) A large price-regulated telecommunications utility shall do  
23 all of the following:

## SENATE BILL 408

1 1. File monthly reports with the commission that document the extent to which  
2 the utility has complied with the standards under sub. (2) during the previous  
3 month.

4 2. File monthly reports with each wholesale customer that document the extent  
5 to which the utility has complied with the standards under sub. (3) with respect to  
6 that wholesale customer during the previous month.

7 (b) Each report filed under par. (a) shall include an affirmation, subject to  
8 penalty of false swearing under s. 946.32, by an officer of the large price-regulated  
9 telecommunications utility that the information contained in the report is true and  
10 complete.

11 (c) The commission shall promulgate rules establishing the format for reports  
12 filed under par. (a).

13 SECTION 24. 196.1995 of the statutes is created to read:

14 **196.1995 Interconnection, collocation, and network elements. (1)**

15 DEFINITIONS. In this section:

INSERT 27-16 ✓

16 (a) "End-user customer" has the meaning given in s. 196.196 (6) (a) 2.

17 (c) ~~(b)~~ "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

18 (d) ~~(c)~~ "Network element" ~~has the meaning given in s. 196.196 (7) (a) 1.~~

19 (e) ~~(d)~~ "Wholesale customer" ~~has the meaning given in s. 196.197 (1) (4).~~

20 (2) GENERALLY. (a) A large price-regulated telecommunications utility shall  
21 provide interconnection, collocation, and network elements to telecommunications  
22 providers in a manner that promotes the maximum development of competitive  
23 telecommunications service offerings in this state.

24 (b) A large price-regulated telecommunications utility shall provide  
25 interconnection, collocation, and network elements in a manner specified by a

**SENATE BILL 408**

1 telecommunications provider if that manner is technically feasible. A manner is  
2 presumed to be technically feasible if the large price-regulated telecommunications  
3 utility or any of its affiliates offer or provide interconnection, collocation, and  
4 network elements in that manner in any jurisdiction.

5 (3) COLLOCATION. (a) A large price-regulated telecommunications utility shall  
6 provide physical or virtual collocation of any type of equipment for interconnection  
7 with, or access to the network elements of, the utility or any collocated  
8 telecommunications provider at the utility's premises, at rates and on terms and  
9 conditions that are just, reasonable, and nondiscriminatory. In this paragraph,  
10 "equipment" includes optical transmission equipment, multiplexers, remote  
11 switching modules, and cross-connects between the facilities or equipment of other  
12 collocated telecommunications providers. In this paragraph, "equipment" also  
13 includes microwave transmission facilities on the exterior or interior of any premises  
14 owned or controlled by a large price-regulated telecommunications utility, unless  
15 the large price-regulated telecommunications utility demonstrates to the  
16 satisfaction of the commission that physical or virtual collocation of such facilities  
17 is not feasible due to technical issues or space limitations.

18 (b) Upon request, a large price-regulated telecommunications utility shall  
19 provide for each of the following in a manner that is consistent with safety and  
20 network reliability standards:

21 1. Cross-connects between the facilities or equipment of collocated  
22 telecommunications providers that are the most reasonably direct and efficient, as  
23 determined by the collocated telecommunications provider.

**SENATE BILL 408**

1           2. Cross-connects between the facilities or equipment of a collocated  
2     telecommunications provider and the network elements platform or transport  
3     facilities of a noncollocated telecommunications provider.

4           (4) NETWORK ELEMENTS. (a) Upon the request of a telecommunications provider,  
5     a large price-regulated telecommunications utility shall provide network elements  
6     on a bundled or unbundled basis, as requested by the telecommunications provider,  
7     at any point that the telecommunications provider determines is technically feasible,  
8     and in a manner that allows the telecommunications provider to combine the  
9     network elements to provide new or existing telecommunications service. A large  
10    price-regulated telecommunications utility must provide network elements under  
11    this paragraph at rates, and on terms and conditions, that are just, reasonable, and  
12    nondiscriminatory.

13          (b) A large price-regulated telecommunications utility may not require a  
14    wholesale customer to purchase network elements on an unbundled basis if the  
15    utility ordinarily combines the elements to provide service to the utility's own  
16    end-user customers, except at the direction of a telecommunications provider that  
17    requests unbundled network elements.

18          (c) At the direction of a telecommunications provider that requests network  
19    elements, a large price-regulated telecommunications utility shall provide network  
20    elements on a bundled or unbundled basis, and shall combine any sequence of  
21    network elements requested by the telecommunications provider that the utility  
22    ordinarily combines for itself.

23          (d) If a telecommunications provider uses the network elements platform of a  
24    large price-regulated telecommunications utility that consists solely of combined  
25    network elements and the use is for the purpose of providing telecommunications

**SENATE BILL 408**

1 service to an end-user customer, the large price-regulated telecommunications  
2 utility may not require that the telecommunications provider purchase other  
3 network elements or retail services of the utility. A telecommunications provider  
4 may order the network elements platform on an as-is basis for an end-user customer  
5 that has received local exchange service from the large price-regulated  
6 telecommunications utility and the telecommunications provider may direct the  
7 utility not to change any of the features previously selected by the end-user  
8 customer. A large price-regulated telecommunications utility that provides a  
9 network elements platform to a telecommunications provider shall provide the  
10 platform without any disruption of services to end-user customers.

11 (5) COMPLIANCE PLAN. (a) No later than the first day of the 9th month beginning  
12 after the effective date of this paragraph .... [revisor inserts date], the commission  
13 shall, after notice and, if requested, a hearing, issue an order establishing a  
14 compliance plan for each large price-regulated telecommunications utility that  
15 includes each of the following:

16 1. Standards for the utility to provide nondiscriminatory access to the utility's  
17 services and network elements, including the utility's operational support system,  
18 to the utility's wholesale customers. The access must be at least equal in quality to  
19 the access provided by the utility to itself or to any subsidiary, affiliate, or other  
20 person to which the utility provides interconnection.

21 2. Procedures for measuring the large price-regulated telecommunications  
22 utility's compliance with the standards under subd. 1.

23 3. Requirements for the utility to make specified monetary payments to a  
24 wholesale customer if the utility fails to comply with the standards under subd. 1.



(b) The requirements of this subsection apply in addition to any requirements under an interconnection agreement.

**SECTION 25.** 196.204 (3) of the statutes is amended to read:

196.204 (3) The commission shall establish the necessary minimum accounting and reporting requirements, and structural separation requirements if necessary, for telecommunications utilities to enable it to enforce this section. For a telecommunications utility regulated under s. 196.195 or 196.196, these requirements shall at a minimum include the filing of cost support documentation demonstrating compliance with subs. (5) and (6) before the effective date of each new service, including any unbundled service element or basic network function; before any reduction in the price of a service offered to end users; and before any increase in the price of a service offered to other telecommunications providers. The commission, on its own motion or upon complaint, may order any telecommunications utility to file cost support documentation showing that a service that the utility offers or a contract that the utility has entered into under s. 196.194 (1) (a) complies with subs. (5) and (6).

**SECTION 26.** 196.219 (3m) of the statutes is created to read:

196.219 (3m) REAL ESTATE DEVELOPMENT. (a) In this subsection, "real estate development" means the act of dividing or subdividing any parcel of land for construction or making improvements to facilitate or allow construction or the act of creating, constructing, or improving a subdivision, development, building, or home.

(b) Except for the recovery of costs included in recurring rates for local exchange service, as defined in s. 196.50 (1) (b) 1., or in recurring rates for wholesale service to other telecommunications providers, a large price-regulated

## SENATE BILL 408

## SECTION 26

telecommunications utility may not impose or assess a charge or fee, or otherwise seek payment or require compensation from any person for the installation, construction, extension, or use of telecommunications facilities, equipment, or infrastructure, related to a real estate development.

SECTION 27. 196.662 of the statutes is created to read:

**196.662 Large price-regulated telecommunications utilities; remedies and enforcement.** (1) COMMISSION AUTHORITY. (a) In this subsection, “interested person” means any of the following:

1. A customer of a large price-regulated telecommunications utility.
2. A telecommunications provider that competes with a large price-regulated telecommunications utility.

(b) The commission may, on its own motion, or in response to a complaint filed by an interested person, investigate whether a large price-regulated telecommunications utility has violated this chapter or a rule or order promulgated or issued under this chapter. After notice and, if requested, a hearing, if the commission finds that a large price-regulated telecommunications utility has committed such a violation, the commission shall directly assess against the utility a forfeiture under sub. (3) or, if applicable, under s. 196.197 (4) (a), and the commission shall do one or more of the following:

1. Order the utility to comply with this chapter or a rule or order promulgated or issued under this chapter.
2. Impose a tariff on the utility for retail or wholesale services or network elements. If the commission imposes a tariff under this subdivision, the tariff shall remain in effect until the utility files its own tariff and the commission, after notice and hearing, approves the utility's tariff.

## SENATE BILL 408

3. Order the utility to pay damages to any person injured by the utility's violation of this chapter or a rule or order promulgated or issued under this chapter.

4. Order the utility to pay costs and reasonable attorney fees to the person, if any, who filed the complaint in response to which the commission took action under this paragraph.

(c) A large price-regulated telecommunications utility against whom the commission assesses a forfeiture under sub. (3) shall pay the forfeiture to the commission within 10 days after receipt of notice of the assessment or, if the utility petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The commission shall remit all forfeitures paid under this paragraph to the state treasurer for deposit in the school fund. The attorney general shall bring an action in the name of the state to collect any forfeiture assessed by the commission under sub. (3) that has not been paid as provided in this paragraph. The only contestable issue in such an action is whether the forfeiture has been paid.

(2) CIVIL REMEDY. (a) Any person who is injured by a large price-regulated telecommunications utility's violation of this chapter or a rule or order promulgated or issued under this chapter may bring an action for damages resulting from the violation, or for injunctive or declaratory relief, or for any combination thereof. If the person prevails in the action, the court shall do all of the following:

1. Award the person costs and reasonable attorney fees, notwithstanding s. 814.04 (1).

2. Require the large price-regulated telecommunications utility to pay the forfeiture specified in sub. (3).

## SENATE BILL 408

(b) A person may bring an action under par. (a) in lieu of filing a complaint with the commission under sub. (1) (b).

(3) FORFEITURES. (a) If the commission or a court finds that a large price-regulated telecommunications utility has violated this chapter or a rule or order promulgated or issued under this chapter, the commission or court shall require the utility to forfeit not less than \$25,000 nor more than \$250,000 for each violation. Each day of violation constitutes a separate violation.

(b) The commission or a court shall consider all of the following in determining the amount of the forfeiture under par. (a):

1. The appropriateness of the forfeiture to the volume of business of the large price-regulated telecommunications utility.

2. The gravity of the violation.

(c) This subsection does not apply to violations of the standards under s. 196.197 (2) or (3).

**SECTION 28. Nonstatutory provisions.**

(1) Using the procedure under section 227.24 of the statutes, the public service commission shall promulgate emergency rules under section 196.197 (2) (d), (4) (a) 2., and (5) (c) of the statutes, as created by this act, for the period before the effective date of permanent rules initially promulgated under section 196.197 (2) (d), (4) (a) 2., and (5) (c) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health,

## SENATE BILL 408

1 safety, or welfare and is not required to provide a finding of emergency for a rule  
2 promulgated under this subsection.

3 (2) The public service commission shall submit in proposed form the rules  
4 required under section 196.197 (2) (d), (4) (a) 2., and (5) (c) of the statutes, as created  
5 by this act, to the legislative council staff under section 227.15 (1) of the statutes no  
6 later than the first day of the 7th month beginning after the effective date of this  
7 subsection. a.r.

8 **INSERT 35-8** SECTION 29. Initial applicability.

9 **1** The treatment of section 196.196 (6) (b) of the statutes first applies to  
10 reports made on the effective date of this subsection.

11 **2** The treatment of section 196.196 (6) (c) of the statutes first applies to orders  
12 made on the effective date of this subsection.

13 **3** The treatment of section 196.196 (6) (f) of the statutes first applies to  
14 notifications made on the effective date of this subsection.

15 **4** The treatment of section 196.219 (3m) of the statutes first applies to  
16 creation, construction, or improvements that begin on the effective date of this  
17 subsection.

18 **5** The treatment of section 196.662 of the statutes first applies to violations  
19 occurring on the effective date of this subsection.

20 **SECTION 30. Effective dates.** This act takes effect on the day after publication,  
21 except as follows:

22 (1) The treatment of section 196.219 (3m) of the statutes and SECTION 29 (4) of  
23 this act take effect on the first day of the ~~10th~~ month beginning after publication.

24 (END)

INSERT 35-8

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1

**INSERT 1A:**

wholesale telecommunications service standards, mandatory credits for telecommunications customers, small business telecommunications service rates, authority of the public service commission to order payments by certain telecommunications providers, telecommunications provider sales practices,

✓

2

**INSERT 2A:**

3) requires certain telecommunications utilities to issue mandatory credits to customers; 4) requires telecommunications providers to comply with wholesale service standards; 5) allows the public service commission (PSC) to approve price increases by price-regulated telecommunications utilities for small business rates; 6) allows the PSC to order certain telecommunications providers to make payments to the PSC or other telecommunications providers; and 7) regulates certain sales practices by telecommunications providers.

✓

3

**INSERT 6A:**

The bill also allows the PSC, upon complaint or its own motion, to issue an order requiring telecommunications utilities, in addition to large price-regulated telecommunications utilities, to issue credits for failing to satisfy the above requirements. The PSC may issue such an order if it is necessary to protect the public interest.

The above requirements regarding the credits do not apply after the first day of the 60th month after the bill's effective date, unless the PSC, after notice and hearing, issues an order providing the requirements apply after that date. The PSC may issue such an order if it is necessary to protect the public interest.

✓

***Wholesale service standards***

An analysis of these changes will be provided in a subsequent version of this draft.

***Small business rates***

An analysis of these changes will be provided in a subsequent version of this draft.

***PSC authority regarding payments by telecommunications providers***

An analysis of these changes will be provided in a subsequent version of this draft.

4

X /

**INSERT 7-1:**

5

**SECTION 1.** 20.155 (1) (Ls) of the statutes is created to read:

6

20.155 (1) (Ls) *Telecommunications provider payments.* All moneys received

7

from payments by telecommunications providers under ss. 196.37(2) and 196.219

6

and 196.37(2)

(3m) (c) for purposes determined by the commission under ss. 196.37 (2) and 196.219

(3m) (c). and 1

**INSERT 11-9:**

**SECTION 2.** 196.196 (1) (em) of the statutes is created to read:

196.196 (1) (em) 1. In this paragraph, "small business rates" means rates for standard business access lines and usage by small businesses with no more than 3 access lines.

2. Notwithstanding pars. (c), (d), and (e), the commission shall investigate whether to allow price-regulated telecommunications utilities to increase small business rates in geographic areas specified by the commission. The commission may allow such an increase in a geographic area only if the commission determines that effective competition exists in the geographic area. If the commission makes such a determination, a price-regulated telecommunications utility may petition the commission to increase small business rates in the geographic area. A price-regulated telecommunications utility shall include with a petition a statement that, if the petition is granted, the utility agrees to allow customers with whom the utility has contracts for small business rates to terminate the contracts as provided in subd. 3. The commission may not grant a petition filed under this subdivision until after the commission's order under s. 196.219 (3m) (b) goes into effect.

3. Notwithstanding any provision in a tariff filed under s. 196.194 (1), if the commission grants a petition filed by a price-regulated telecommunications utility under subd. 2., a customer of the utility may, no later than one year after the effective date of the commission's order granting the petition, terminate, without penalty, a contract with the utility for small business rates before the expiration of the contract if the customer terminates the contract for the purpose of entering into a new

1 contract for small business rates with another telecommunications provider.  
2 Termination of a contract under this subdivision is effective when the  
3 price-regulated telecommunications utility receives oral or written notice from a  
4 customer.

5 4. If the commission grants a petition filed by a price-regulated  
6 telecommunications utility under subd. 2., the utility shall give notice to its  
7 customers that are subject to small business rates that describes the small business  
8 rate increase approved by the commission and the right of customers to terminate  
9 contracts under subd. 3. The notice shall be published in a newspaper of general  
10 circulation in the affected geographic area within a reasonable time period after the  
11 commission grants the petition, and shall be included in or on the bill of each  
12 customer that is subject to small business rates in the billing first following the  
13 commission's granting of the petition.

\*\*\*\*NOTE: Although not included in the instructions, I based the above  
requirements on s. 196.196 (1) (f), stats. Is it okay?

14 **SECTION 3.** 196.196 (1) (g) 1. (intro.) of the statutes is amended to read:

15 196.196 (1) (g) 1. (intro.) Five years after a telecommunications utility elects  
16 to become a price-regulated telecommunications utility or, if subd. 4. applies, within  
17 the dates specified in that subdivision, the commission shall hold a hearing, and at  
18 any time thereafter, upon complaint or on the commission's own motion, the  
19 commission may hold a hearing, to determine whether it is in the public interest to  
20 suspend one or more of the provisions of this subsection, except par. (em), as it  
21 applies to a price-regulated telecommunications utility or to approve an alternative  
22 regulatory method for that utility. In making a determination under this  
23 subdivision, the commission shall identify all of the following:



1 **INSERT 13-1:**

2 3. "Large price-regulated telecommunications utility" means a  
3 price-regulated telecommunications utility that has more than 500,000 access lines  
4 in use in this state at the time of electing to become price-regulated.

5 **INSERT 13-2:**

6 5. "Telecommunications utility" means a large price-regulated  
7 telecommunications utility or a telecommunications utility specified by the  
8 commission in an order under par. (f).

9 **INSERT 16-10:**

10 **SECTION 4.** 196.196 (6) (f) of the statutes is created to read:

11 196.196 (6) (f) *Applicability*. If necessary to protect the public interest, the  
12 commission may, upon complaint or its own motion, issue an order specifying  
13 telecommunications utilities in addition to large price-regulated  
14 telecommunications utilities that are subject to the requirements of this subsection.

15 **INSERT 16-12:**

16 **SECTION 5.** 196.196 (6) (h) of the statutes is created to read:

17 196.196 (6) (h) *Sunset*. 1. Except as provided in subd. 2., this subsection does  
18 not apply after the first day of the 60th month beginning after the effective date of  
19 this paragraph .... [revisor inserts date].

20 2. If necessary to protect the public interest, the commission may, after notice  
21 and hearing, issue an order providing that this subsection applies after the date  
22 specified in subd. 1.

23 **INSERT 27-16:**

1 (b) "Large price-regulated telecommunications utility" means a  
2 price-regulated telecommunications utility that has more than 500,000 access lines  
3 in use in this state at the time of electing to become price regulated.

4 **INSERT 27-18:**

5 means a facility or equipment used to provide telecommunications service. "Network  
6 element" includes features, functions, and capabilities that are provided by means  
7 of such a facility or equipment, including subscriber numbers, databases, signaling  
8 systems, and information sufficient for bills or collections, or that are used in  
9 transmitting, routing, or otherwise providing telecommunications service.

10 **INSERT 27-19:**

11 means a telecommunications provider that uses the services, products, or facilities  
12 of a large price-regulated telecommunications utility to provide telecommunications  
13 service to an end-user customer.

14 **INSERT 31-2:**

15 **SECTION 6.** 196.219 (1) (c) of the statutes is created to read:

16 196.219 (1) (c) "Wholesale services" include preordering, ordering and  
17 provisioning, maintenance and repair, network performance, unbundled elements,  
18 operator services and directory assistance, system performance, service center  
19 availability, billing, and any other service that the commission specifies by order.

\*\*\*\*NOTE: The above allows the PSC to specify additional wholesale services by order. As drafted, the PSC may, but is not required, to hold a hearing before issuing such an order. Is that okay?

\*\*\*\*NOTE: The instructions are confusing on whether and when the PSC may issue an order referenced above. Is it your intent that the PSC may only be allowed to issue the order no later than 90 days after the effective date of the bill? And that, after that deadline, the PSC may only promulgate rules that specify additional wholesale services? If so, why? Also, if that is your intent, the above definition must be redrafted.

\*\*\*\*NOTE: How is "provisioning" different from "providing"? Does "provisioning" have some special meaning in the telecommunications industry?

SECTION 7. 196.219 (3) (p) of the statutes is created to read:

196.219 (3) (p) Fail to provide wholesale services to another telecommunications provider on the same terms and conditions that the telecommunications utility or telecommunications provider provides to itself or to any of its affiliates.

\*\*\*\*NOTE: The above prohibition applies to a "telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange telecommunications services". See s. 196.219 (3) (intro.). Is that okay?

SECTION 8. 196.219 (3m) of the statutes is created to read:

196.219 (3m) WHOLESALE SERVICE STANDARDS. (a) In this subsection:

1. "Repeat trouble report" means a trouble report by a wholesale customer who has previously made a trouble report regarding the same wholesale service.

2. "Trouble report" means a report to a telecommunications provider by a wholesale customer about a problem regarding a wholesale service provided by the telecommunications provider.

\*\*\*\*NOTE: Are the above definitions okay?

(b) No later than the first day of the 4th month beginning after the effective date of this paragraph ... [revisor inserts date], the commission shall, by order, establish nondiscriminatory standards that, except as provided in par. (d), require a telecommunications provider to do all of the following:

\*\*\*\*NOTE: It's not necessary to specify that the standards established by the PSC must be reasonable. In economic and social welfare regulation, the due process clauses of the federal and state constitutions limit the substantive power of the state (including the PSC) to pursue only legitimate state objectives by rational means. Because the PSC's standards must be rational, I don't think anything else is gained by also requiring them to be reasonable. However, if you have specific requirements in mind that also should apply to the standards, please let me know.

\*\*\*\*NOTE: As drafted, the PSC may, but is not required, to hold a hearing before issuing the order. Is that okay?

1. Provision wholesale services and related facilities in a timely manner.

✓  
\*\*\*\*NOTE: As noted above, how is "provision" different from "provide"? Are you talking about the initiation of wholesale service to a customer? Also what is intended by provisioning a facility? Does it mean to provide access, or to actually transfer the facility to someone else? Also, I assumed you are talking about facilities that have some relationship to wholesale service, so I referred to facilities "related" to wholesale service. Is that okay?

1           2. Repair wholesale service outages in a timely manner. ✓

2           3. Minimize the frequency of trouble reports, including trouble reports within ✓  
3   30 days after initiating a wholesale service.

4           4. Minimize the frequency of repeat trouble reports. ✓

5           (c) The order under par. (b) may require a telecommunications provider that  
6   fails to comply with the order to make payments to another telecommunications  
7   provider that is affected by the failure to comply or to the commission in amounts and  
8   according to schedules that are specified in the order. The commission may use the  
9   payments for any purpose determined by the commission relating to maintaining or  
10   improving telecommunications service quality, including compensating persons who  
11   are affected by the failure to comply with the order.

→ \*\*\*\*NOTE: The above is my attempt to describe the "self-executing remedy  
payments" which is a term that I don't think has a commonly understood meaning. ✓

\*\*\*\*NOTE: I think you need to specify a purpose for <sup>which</sup> ~~what~~ the PSC may use the  
payments ~~for~~. Is the above purpose okay?

12           (d) The commission may, upon its own motion or a petition from an interested  
13   person, issue an order exempting a telecommunications provider from the order or  
14   any requirement of the order issued under par. (b), or imposing a requirement that  
15   is less stringent than a requirement of the order issued under par. (b), if the  
16   commission finds, after notice and hearing, that an order under this paragraph is in  
17   the public interest and the telecommunications provider that is the subject of the  
18   order has not violated this section or any of the following: ✓

1 1. A provision of the federal Telecommunications Act of 1996 relating to  
2 wholesale service.

3 2. A regulation or order issued under the federal Telecommunications Act of  
4 1996 relating to wholesale service.

5 3. An interconnection agreement approved by the commission.

6 (e) After the commission issues the order under par. (b), the commission may  
7 promulgate rules that implement the requirements of this subsection.

8 **SECTION 9.** 196.37 (2) of the statutes is amended to read:

9 196.37 (2) If the commission finds that any measurement, regulation, practice,  
10 act or service is unjust, unreasonable, insufficient, preferential, unjustly  
11 discriminatory or otherwise unreasonable or unlawful, or that any service is  
12 inadequate, or that any service which reasonably can be demanded cannot be  
13 obtained, the commission shall determine and make any just and reasonable order  
14 relating to a measurement, regulation, practice, act or service to be furnished,  
15 imposed, observed and followed in the future. An order under this subsection against  
16 a telecommunications provider may require the telecommunications provider to  
17 make payments in amounts specified in the order to persons affected by the  
18 measurement, regulation, practice, act, or service or to the commission. The  
19 commission may use any payment received under this subsection for any purpose  
20 determined by the commission relating to maintaining or improving  
21 telecommunications service quality, including compensating persons who are  
22 affected by the measurement, regulation, practice, act, or service.

History: 1981 c. 390; 1983 a. 53 ss. 47, 50; 1989 a. 344; 1993 a. 496; 1995 a. 409.

\*\*\*\*NOTE: I think you need to specify a purpose for <sup>which</sup> the PSC may use the  
payments ~~for~~. Is the above purpose okay?

use  
auto numbers

create  
auto-ref  
"A"

1 ~~(A)~~ The treatment of section 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em)  
2 1., and (g), and (7) of the statutes first applies to changes in telecommunications  
3 ~~servicds~~ made on the effective date of this subsection.

services

**INSERT 35-12:**

5 ~~(A)~~ The treatment of section 196.37 (2) of the statutes first applies to orders  
6 issued on the effective date of this subsection.

**INSERT 35-22:**

8 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em) 1., and (g), and (7)

(END)

## 2001 BILL

INSERT 6B

1 AN ACT *to amend* 100.207 (3) (a), 100.207 (5), 100.207 (6) (b) 1., 100.207 (6) (c)  
2 and 100.207 (6) (em) 1., and *to create* 100.207 (3) (d), 100.207 (3m), 100.207 (6)  
3 (g) and 100.207 (7) of the statutes; **relating to:** prohibited actions by  
4 telecommunications providers, administration and enforcement of the federal  
5 communications commission unauthorized carrier charge rules and remedies,  
6 and requiring the exercise of rule-making authority.

**Analysis by the Legislative Reference Bureau**

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the telecommunications services must provide independent confirmation of the order.

This bill provides that a person may request a telecommunications service orally, in writing, or by electronic means but specifies that a telecommunications provider may not provide services to a person who orders the service by any electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. The bill prohibits a person from enrolling a customer

sub  
sub Sales practices of telecommunications providers

## BILL

INSERT 6B (continued)

in any telecommunications service in which the customer did not affirmatively request to be enrolled. The bill specifies that a request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular service. The bill also prohibits the practice known as "slamming." A person engages in slamming by making a change in a customer's selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

In addition to the slamming prohibitions created under this bill, federal law also prohibits slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under rules promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC rules prohibiting slamming including the remedies and penalties specified under those rules. This bill directs the department of agriculture, trade and consumer protection (DATCP) to notify the FCC of its intention to administer the FCC rules. It also requires DATCP to promulgate rules that are consistent with the FCC regulations rules.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

END of INSERT 6B

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT 7-2:

SECTION 1. 100.207 (3) (a) of the statutes is amended to read:

100.207 (3) (a) A person may not engage in negative option billing or negative enrollment of telecommunications services, including unbundled telecommunications services. A person may not bill a customer for, or enroll a customer in, any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the federal communications commission, or the public service commission. A customer's failure to refuse a person's proposal to provide a telecommunications service is not an affirmative request for that telecommunications service. A customer's request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular telecommunications service.

SECTION 2. 100.207 (3) (d) of the statutes is created to read:



## BILL

INSERT 7.2 (continued)

1 100.207 (3) (d) A person may not make a change in a customer's selection of a  
2 telecommunications service provider unless the customer affirmatively requests  
3 that the person take such action.

4 SECTION 3. 100.207 (3m) of the statutes is created to read:

5 100.207 (3m) REQUESTS FOR SERVICE. (a) A customer may affirmatively request  
6 a telecommunications service orally, in writing, or by electronic means.

7 (b) Notwithstanding par. (a), a person may not provide a telecommunications  
8 service to a customer who orders the service by an electronic means that  
9 simultaneously activates that service.

10 SECTION 4. 100.207 (5) of the statutes is amended to read:

11 100.207 (5) TERRITORIAL APPLICATION. ~~Subsections (2) to (4) apply~~ This  
12 subsection applies to any practice directed to any person in this state.

13 SECTION 5. 100.207 (6) (b) 1. of the statutes is amended to read:

14 100.207 (6) (b) 1. The department of justice, after consulting with the  
15 department of agriculture, trade and consumer protection, or any district attorney  
16 upon informing the department of agriculture, trade and consumer protection, may  
17 commence an action in circuit court in the name of the state to restrain by temporary  
18 or permanent injunction any violation of this section. Injunctive relief may include  
19 an order directing telecommunications providers, as defined in s. 196.01 (8p), to  
20 discontinue telecommunications service provided to a person violating this section  
21 or ch. 196. Temporary injunctive relief may include an order requiring that a person  
22 who provides telecommunications services deposit in an escrow account any  
23 payments that the provider has received or is expected to receive from customers as  
24 a result of practices that may violate this section or ch. 196. Before entry of final  
25 judgment, the court may make such orders or judgments as may be necessary to

**BILL***INSEPT 2-2 (continued)*

1 restore to any person any pecuniary loss suffered because of the acts or practices  
2 involved in the action if proof of these acts or practices is submitted to the satisfaction  
3 of the court.

4 **SECTION 6.** 100.207 (6) (c) of the statutes is amended to read:

5 100.207 (6) (c) Any person who violates subs. (2) to (4) this section shall be  
6 required to forfeit not less than \$25 nor more than ~~\$5,000~~ \$10,000 for each offense.  
7 Each day of violation constitutes a separate offense. Forfeitures under this  
8 paragraph shall be enforced by the department of justice, after consulting with the  
9 department of agriculture, trade and consumer protection, or, upon informing the  
10 department, by the district attorney of the county where the violation occurs.

11 **SECTION 7.** 100.207 (6) (em) 1. of the statutes is amended to read:

12 100.207 (6) (em) 1. Before preparing any proposed rule under ~~this section~~ par.  
13 (e), the department shall form an advisory group to suggest recommendations  
14 regarding the content and scope of the proposed rule. The advisory group shall  
15 consist of one or more persons who may be affected by the proposed rule, a  
16 representative from the department of justice, and a representative from the public  
17 service commission.

18 **SECTION 8.** 100.207 (6) (g) of the statutes is created to read:

19 100.207 (6) (g) Nothing in this subsection precludes the department from  
20 seeking a remedy or penalty in accordance with the rules promulgated under sub.  
21 (7). Practices in violation of sub. (3) may also constitute a violation of the rules  
22 promulgated under sub. (7).

23 **SECTION 9.** 100.207 (7) of the statutes is created to read:

24 100.207 (7) **ADMINISTRATION OF FEDERAL COMMUNICATIONS COMMISSION RULES.**  
25 The department shall administer and enforce the federal communications

**BILL**

1 commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110  
2 to 64.1190 and shall notify the federal communications commission, in accordance  
3 with 47 CFR 64.1110 (a), of its intention to administer and enforce those rules and  
4 remedies. In addition to the rules promulgated under sub. (6) (e), the department  
5 shall promulgate rules that are consistent with the commission's unauthorized  
6 carrier change rules and remedies under 47 CFR 64.1110 to 64.1190.

7 ~~**SECTION 10. Initial applicability.**~~

8 (1) This act first applies to changes in telecommunications services made on the  
9 effective date of this subsection.

10 **SECTION 11. Effective date.**

11 (1) This act takes effect on the first day of the 10th month beginning after  
12 publication.

13 (END)

END OF INSERT 7-2

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4912/P1dn

MDK:.....

gs

Senator Jauch:

Please review this preliminary draft to make sure that it achieves your intent.

Note that it does not yet incorporate the instructions under items IV (rural telecommunications investment plan), VIII (5-year review of status of telecommunications competition), or IX (definition of effective competition). Also note that the text includes NOTES for your review. In addition, to expedite the draft, the analysis is not yet complete and I have not yet resolved whether any changes to the rule-making provisions of ch. 227, stats., are necessary.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4912/P1dn  
MDK:cjs:ch

February 15, 2002

Senator Jauch:

Please review this preliminary draft to make sure that it achieves your intent.

Note that it does not yet incorporate the instructions under items IV (rural telecommunications investment plan), VIII (5-year review of status of telecommunications competition), or IX (definition of effective competition). Also note that the text includes NOTES for your review. In addition, to expedite the draft, the analysis is not yet complete and I have not yet resolved whether any changes to the rule-making provisions of ch. 227, stats., are necessary.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

## Kunkel, Mark

From: Korbitz, Adam  
Sent: Friday, February 15, 2002 12:38 PM  
To: Kunkel, Mark  
Cc: Stolzenberg, John  
Subject: X-SUB drafting instructions

Mark, I'm taking a stab at this but call John Stolzenberg if you need clarification.

### Section 196.204(3):

A. Add language to this section that would require the PSC to promulgate by rule accounting standards and practices that would conform to federal regs found at 47 CFR 32.27 to govern transactions with affiliated interests. PSC would need to submit draft rules to legislative council clearinghouse with four months of effective date. This provision:

would apply only to a telecommunications utility that has less than 50,000 access lines in use in this state.

a. For purposes of this definition, if a telecommunications utility is owned, controlled, or held by a holding company, the number of access lines in use in this state by the telecommunications utility shall include the number of access lines in use in this state by all other telecommunications utilities, other than commercial mobile radio service providers, that are owned, controlled, or held by the holding company.

2. "Affiliated interest" has the meaning specified in s. 196.52 (1), Stats.

In addition, there would be two exceptions to the prohibition to cross-subsidies under 196.204. Again, these would be applicable to the same companies as the provision above (50,000 lines and less, etc.).

B. First, for a period of five years from enactment, companies could guarantee a loan for an affiliated interest. While the guarantee would be good for the life of the loan, it must be taken out during the five year window of opportunity. After five years, we would revert to current law. Create an exception to the prohibition on a telecommunications utility subsidizing an unregulated activity under the first sentence in s. 196.204 (1), Stats., for a loan guarantee that an eligible utility provides for a loan made to an affiliated interest of the eligible utility if all of the following condition applies: The purpose of the loan is to partially or completely fund equipment that the affiliated interest or eligible utility will use to provide a voice, data or high-speed based telecommunications service, a cable television service, or both.

C. Second, create a second exception to the prohibition on cross-subsidies that allows an affiliated interest free use of intangibles -- name, goodwill, service or trademarks and other intangibles -- section 196.204 notwithstanding. However, this section can only be used for an affiliated interest to provide a voice, data or high-speed based telecommunications service, a cable television service, or both.

D. There would be two additional conditions attached to B and C, above. First, an eligible utility must waive its state franchise protection to take advantage of B or C. Second, if the eligible utility should ever invoke its federal rural exemption during the life of a loan under (B) above, the affiliated interest must pay the utility an amount equal to 1/4% (one-quarter of one percent) of the outstanding loan balance annually from the time that the exemption is invoked. Second, if the eligible utility should ever invoke its federal rural exemption after having taken advantage of (C) above, the affiliated interest must begin paying the eligible utility an amount equal to 1/4% of its annual gross sales starting from the date it invokes the federal rural exemption.

Mark, I realize the above is inartfully drafted but I hope the intent is clear. I also think it is simpler. Call me with any questions. Thanks, Adam.

RN 196.204(3) → (3)(a)  
(12)(3)(b)  
For certain utls, the  
min. acctg. under (a)  
shall...

just the first sentence?

does that include internet?

first sentence of 196.204(1)?

196.50(1)

(b)

2 b.

and

delete

2 a lts:  
① Commission  
determines  
opposite of

② of all files  
(F)(12)  
1 (F)(1)  
(A)(ii)

47 USC  
251 f?  
(1)(A)(i)(ii)  
(c)

# SENATE TASK FORCE ON TELECOMMUNICATIONS ISSUES

## Final Recommendations for Telecommunications Reform – Senator Bob Jauch

### Outline of Working Concepts

#### I. WHOLESALE SERVICE QUALITY

The goal should be to achieve the same degree of seamless integration and ease of consumer movement in the local telephone market as is currently experienced in the long-distance market. No one can plausibly suggest that we have achieved that yet. Therefore, the *long-term goal* should be that it is just as easy to switch from CLEC to CLEC or from CLEC back to ILEC as it should be to switch from a large ILEC to a CLEC. A degree of parity should be achieved across the industry to achieve the desired degree of seamless integration and ease of consumer movement.

#### Proposal:

1. Add the following language to the **prohibited practices** section of 196.219(3):

Fail to provide wholesale services to telecommunications providers on the same terms and conditions as the telecommunications utility or telecommunications provider provides to itself or any of its affiliates, (unless such terms and conditions violate federal law.)

2. In addition, **define wholesale services** in sub (3) above as follows:

Wholesale services include, but are not limited to, pre-ordering; ordering and provisioning; maintenance and repair; network performance; unbundled elements; operator services and directory assistance; system performance; service center availability; and billing.

→ OSS document

3. **PSC Direction**—include in (3)(n) proposed above—[NEW]

The commission may, by order, establish additional or different wholesale services subject to this paragraph and

OK'd from 227

shall issue its first order no later than 90 days after the effective date of this paragraph. After the initial order, the commission may also implement this paragraph by rule.

The Commission may issue an order that sets standards to ensure nondiscriminatory and reasonable wholesale service and that includes self-executing remedy payments that a telecommunications utility must pay to the state or to another telecommunications provider upon the utility's failure to comply with those standards. No later than 90

days after the effective date of this paragraph, the Commission shall, by order, establish minimum wholesale service standards applicable to telecommunications utilities in this state with respect to the following: 1. timely provisioning of services or facilities; 2. trouble report rate; 3. repeat trouble report rate; 4. trouble report rate within first 30 days of new service; and 5. timely repair of service outages. This order may include self-executing monetary remedies payable by the utility to the state, or to the other telecommunications provider receiving such wholesale services, for failure to meet minimum standards.

The Commission may, on its own motion or upon petition, issue an order exempting a telecommunications utility from minimum wholesale service standards and remedies or establishing different minimum wholesale service standards or remedies if the Commission has found, after notice and hearing, that such as exemption is in the public interest and the utility has not violated this section, a provision of the Telecommunications Act of 1996, a rule or order issued under the Telecommunications Act of 1996, or a provision of an interconnection contract approved under the Telecommunications Act of 1996.

**Note: providing for both rule and order permits flexibility. Rules in longer term will implement established telecommunications basics. Order power allows PSCW to move quickly to promote or protect competition minimums in an industry that moves faster than a rulemaking typically allows.**

4. "Remedy Plan" power—underscore added to existing statute.

196.37(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or

(rules?  
order?)

wholesale  
local exchange  
services

196.219

wholesale services  
necy to provide

necy to  
provide  
local exch  
service

provider

relating to  
wholesale  
service

nondisc's possible

providers

providers

not FCC  
order

agreement

196.219



Issues

An order against a  
telcomp under law -  
the PSC may also

otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future, and may determine and order monetary compensation to the commission or other persons for failure to comply.

require  
the TP to

"assessant"?  
call Ed Marion

limit to  
telecom revenues

not pecuniary  
losses  
(which wd  
require  
proof  
docs)

## II. INTERCONNECTION, COLLOCATION AND NETWORK ELEMENTS

Incorporate section 24 of LRB 4151/2 and any other relevant sections to create interconnection, collocation and network elements standards for large price-capped utilities.

relationship  
to  
wholesale  
stds

## III. BUSINESS LINES & FRESH LOOK

Once wholesale standards and remedies are in place, allow for a process similar to 196.195 by which the incumbent can petition the PSC to lift the price caps on three and fewer business lines within a specific geographic area, dependent upon the incumbent demonstrating that effective competition exists in that market. PSC could not lift price caps in a market absent a showing of effective competition.

can't lift price caps until

already PSC  
already  
current  
law?  
see  
196.195

Customers with one to three business lines in a market where PSC lifts the price caps would enjoy a one-year fresh look period that would coincide with lifting of the price caps. Customer can only terminate a contract if the customer enters into another contract with another telecom provider. Fresh look would not apply to areas where the price caps are not lifted, or to customers with more than three lines. Further, specify that the incumbent's petition for price cap relief would constitute a waiver of any contractual rights relating to the fresh-look period. Absent such a waiver, PSC could not grant price cap relief.

(196.195)

## IV. RURAL TELECOMMUNICATIONS INVESTMENT PLAN

A. Adopt a modified form of SB 355/AB 662. Incorporate the following general restrictions:

1. Small telcos and coops would have five years to take advantage of these provisions (except for loan guarantees, which would be for the life of the loan, provided loan is

patronage  
capital

relationship to wholesale stds  
applies to PSC's updated rules  
common PSC to investigate (from docket)  
initiate docket but price caps can't be lifted until wholesale stds & remedies in place  
PSC - a geog. area with  
eligible for price caps  
incumbent can petition for relief, which is a waiver  
allows to form w/o penalty

taken out before sunset). Otherwise, provisions would sunset after five years.

2. Could be allowed only for new telecommunications ventures. Need to define telecommunications in such a way that it does not include cable television.

3. Would be required to waive both state franchise protection and the federal rural exemption in order to use provisions.

4. Subsidies would be capped at a certain percentage of retained earnings (150%), and that percentage would decrease in equal amounts each year for five years, until after five years we are back at 100% (for example, 140% the fourth year, 130% the third year, etc.).

- a. For coops, rather than defining retained earnings = patronage capital, simply have a separate provision allowing coops to commit an equal percentage of patronage capital, in a manner similar to that used for for-profits.

- B. Small telcos and coops would be specifically allowed to do only the following:

1. Guarantee loans exceeding 100% of retained earnings or patronage capital. Guarantee would be for the life of the loan, if taken out before the five-year sunset. Guarantee would be subject to the percentage limit on retained earnings or patronage capital.

2. HOCOM-LOCOM would be required only for asset transfers over a certain dollar limit (\$500,000).

3. Competitive ventures would not have to pay ILEC for specified intangibles, such as goodwill or use of name.

- C. Allow for a mechanism by which an ILEC that finds itself competing with a competitive venture can match the prices of its competitor, TSLRIC notwithstanding. Can only match competitors price, and if competition disappears, must petition PSC to raise prices again.

— create exception to 196.204(15)

even if below costs

DSC already requires those 2 waivers

47 USC 251f

— guaranteed loans

util includes coops

in alt 195 plans

plans

services

quantity loan guarantee to determine value of loan

compare to PE in previous year (annual report)

196.50(1)(b) (barrier to competition)

can go above retained earnings

196.204 (13)

except from 196.204 (1)

— must use actual cost, not mkt value

— doesn't count against RE exemption

V. PRICE CAP – SERVICE QUALITY PENALTY

LPR TUs

✓ Increase the service-quality penalty on large price-capped telecommunications companies from 2% to 10% as per section 6 of LRB 4151/2.

VI. RETAIL SERVICE QUALITY

When it comes to retail service quality, Ameritech stands out in a number of respects. The company's history of retail service quality problems is entirely unique, and there is evidence to believe it is a problem of a cyclical nature. On the other hand, it is true Ameritech has made recent and significant improvements in retail service quality.

While Ameritech should not be punished for past mistakes – or for mistakes it *might* make in the future – it would be imprudent given the company's history of service quality problems not to grant some limited protection to the Ameritech consumer over and above what exists now.

It must also be recognized that Ameritech is, in many respects, a *de facto* monopoly, at least in the residential service market. Therefore, it makes sense to consider an approach that phases out standards and penalties over time, and that ensures that the PSC has adequate tools to deal with future problems with any telecommunications provider on a case-by-case basis. Ultimately, competition and meaningful consumer choice should be the guarantor of retail service quality. However, as demonstrated by the problems Ameritech experienced during the year 2000, we are not at that point yet.

Proposal: Create mandatory retail standards and customer credits for large price-capped telecommunications companies, but only for the following:

LPR TUs

1. delays in installing service
2. delays in repairing service
3. missed appointments

not all  
of  
CPLS  
proposal

To this extent, incorporate sections 11, 12, 13, 14, 15, 18, 19 and any other relevant sections of LRB 4151/2.

These standards would sunset after five years, unless the PSC determined that such a sunset would not be in the public interest.

↓  
what is  
public interest?

provider  
PSC would have authority to apply these standards to any telecommunications carrier on a complaint basis, if the public interest required it.

own motion or complaint  
by anybody  
- don't have to have a Hlg

## VII. SLAMMING AND CRAMMING

Incorporate provisions of LRB 2638/2 to prohibit various slamming and cramming practices.

PSC  
can determine  
not to  
have a Hlg

## VIII. FIVE-YEAR PSC REVIEW OF THE STATUS OF TELECOM COMPETITION

After five-year period, require the PSC to review the status of telecommunications competition in Wisconsin and make recommendations to the legislature.

The purpose of the report and recommendation would be to assess the current regulatory framework and recommend changes, if necessary. The report, if submitted, must assess all aspects of regulation and all providers. The report must consider the following nonexclusive list of factors:

- 1. whether anti-competitive behavior by any telecommunications provider poses an unreasonable barrier to the development of an effectively competitive local telecommunications market, (and whether the legislature should consider structural separation among other potential remedies.)
- 2. The current state of competition in local telecommunications service markets
- 3. differences in the level of regulation applied to incumbent local carriers, competitive local carriers, cable, and wireless service providers *CMRSPs*
- 4. number of local service providers (incumbent, CLEC, cable and wireless) in relevant product and geographic markets in Wisconsin; compare to national data
- 5. market power of the incumbent local carriers, competitive local carriers, cable, and wireless service providers in relevant product and geographic markets in Wisconsin; compare to national data
- 6. prices of local service within each relevant product and geographic market charged by each provider (incumbent, CLEC, cable and wireless) in Wisconsin, compared to the national averages

HOLD OFF  
until  
later

~~interstate~~  
~~servi~~  
use  
intrastate

utils

\$ carriers

telco util

alt telco  
util

internet  
access (NOT cable TV)

7. comparison of retail service quality credit plans offered by each provider (incumbent, CLEC, cable and wireless); also compare to plans offered elsewhere in the nation

8. comparison of number of **both** raw and "justified" residential customer complaints to the PSC related to poor service, cramming and slamming for each provider (incumbent, CLEC, cable and wireless)

9. availability, price and quality of unbundled network elements, interconnection and collocation as well as remedy plans associated with such wholesale services

10. barriers to entry into relevant product and geographic local telecommunications markets

total  
complaints  
( "justified"  
= fault  
of  
provider  
vs  
utility )

relating  
back  
to  
other  
parts  
of  
proposal

#### IX. DEFINITION OF EFFECTIVE COMPETITION

Create a measurable definition of competition and a process to determine when competition exists in a given market, similar to the process set forth in 196.195. Definition would have both qualitative (subjective) and quantitative (objective) elements, and the process would vest considerable discretion in the expertise of the PSC.

effective  
competitor  
proposed

shgs

(P2)

MONDAY 10:30 am  
2/18

D-NOTE

RM HAS  
BEEN  
RUN

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regenerate

1 AN ACT *to amend* 100.207 (3) (a), 100.207 (5), 100.207 (6) (b) 1., 100.207 (6) (c),  
 2 100.207 (6) (em) 1., 196.196 (1) (c) 1., 196.196 (1) (g) 1. (intro.), 196.196 (3) (a)  
 3 and 196.37 (2); and *to create* 20.155 (1) (Ls), 100.207 (3) (d), 100.207 (3m),  
 4 100.207 (6) (g), 100.207 (7), 196.196 (1) (em), 196.196 (6) (title), 196.196 (6) (a),  
 5 196.196 (6) (b), 196.196 (6) (c), 196.196 (6) (d), 196.196 (6) (e), 196.196 (6) (f),  
 6 196.196 (6) (g), 196.196 (6) (h), 196.1995, 196.219 (1) (c), 196.219 (3) (p) and  
 7 196.219 (3m) of the statutes; **relating to:** regulation of large price-regulated

8 ~~telecommunications - utilities, telecommunications unbundling and~~  
 9 ~~interconnection requirements, wholesale telecommunications service~~  
 10 ~~standards, mandatory credits for telecommunications customers, small~~  
 11 ~~business telecommunications service rates, authority of the public service~~  
 12 ~~commission to order payments by certain telecommunications providers,~~  
 13 ~~telecommunications provider sales practices, providing an exemption from~~

INSERT 1-13

1 emergency rule procedures, granting rule-making authority, and making an  
2 appropriation.

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***Analysis by the Legislative Reference Bureau***

This bill makes certain changes to the regulation of telecommunications providers, including "large price-regulated telecommunications utilities." The bill defines a "large price-regulated telecommunications utility" as a telecommunications utility that had more than 500,000 access lines in use in this state at the time that the utility elected to become price regulated. Under current law, "price regulation" is a form of regulation that is based on the prices of services offered by a telecommunications utility, instead of the utility's rate-of-return, which is the traditional basis for regulating public utilities.

The bill does all of the following, which are described below: 1) creates interconnection, collocation, and network elements requirements; 2) changes the formula for determining the price increases that a large price-regulated telecommunications utility is allowed to make; 3) requires certain telecommunications utilities to issue mandatory credits to customers; 4) requires telecommunications providers to comply with wholesale service standards; 5) allows the public service commission (PSC) to approve price increases by price-regulated telecommunications utilities for small business rates; 6) allows the PSC to order certain telecommunications providers to make payments to the PSC or other telecommunications providers; ~~and~~ 7) regulates certain sales practices by telecommunications providers.

***Interconnection, collocation, and network elements***

The bill creates various requirements for large price-regulated telecommunications utilities regarding interconnection, collocation, and network elements. The bill defines a "network element" as a facility or equipment used to provide telecommunications service. These requirements relate to the duty of a telecommunications utility under federal law to interconnect its facilities and equipment to other telecommunications providers. "Collocation" refers to the placement of a telecommunications provider's facilities and equipment at the premises of a telecommunications utility for the purpose of interconnection. Collocation may be physical, in which facilities and equipment are actually placed at the utility's premises, or collocation may be virtual, which is the functional equivalent of physical collocation, but without the actual placement of facilities and equipment at the utility's premises.

The bill requires a large price-regulated telecommunications utility to provide interconnection, collocation, and network elements in a manner that promotes the maximum development of competitive telecommunications service offerings in this state. Also, a large price-regulated telecommunications utility must provide interconnection, collocation, and network elements in a manner specified by a telecommunications provider if that manner is technically feasible. In addition, the rates at, and terms and conditions on, which a large price-regulated

telecommunications utility provides physical or virtual collocation of any type of equipment for interconnection with, or access to the network elements of, the utility or any collocated telecommunications provider at the utility's premises, must be just, reasonable, and nondiscriminatory.

The bill also requires a large price-regulated telecommunications utility to provide, upon request, for cross-connects between the facilities or equipment of collocated telecommunications providers that are the most reasonably direct and efficient, as determined by the collocated telecommunications provider. Also upon request, a large price-regulated telecommunications utility must provide for cross-connects between the facilities or equipment of a collocated telecommunications provider and the network elements platform or transport facilities of a noncollocated telecommunications provider. (A "network elements platform" is the sum of the various constituent network elements of the utility.) A large price-regulated telecommunications utility must provide either type of cross-connect in a manner that is consistent with safety and network reliability standards.

Also, a large price-regulated telecommunications utility must, as requested by a telecommunications provider, provide network elements on a bundled or unbundled basis at rates, and on terms and conditions, that are just, reasonable, and nondiscriminatory. Although not defined in the bill, it is understood in the telecommunications industry that "bundled" network elements are those that are not separated from other network elements, and "unbundled" network elements are those that are separated from other network elements. The network elements must be provided at any point that the telecommunications provider determines is technically feasible and provided in a manner that allows the telecommunications provider to combine the network elements to provide new or existing telecommunications service. Unless directed by a telecommunications provider, a large price-regulated telecommunications utility is not allowed to require a wholesale customer to purchase network elements on an unbundled basis if the utility ordinarily combines the elements to provide service to the utility's own end-user customers. The bill defines "end-user customer" as a person who receives local exchange service, but does not resell the service or use the service to provide telecommunications service to another person. Also, as requested by a telecommunications provider, a large price-regulated telecommunications utility must combine any sequence of network elements that the utility ordinarily combines for itself.

In addition, a large price-regulated telecommunications utility may not require that a telecommunications provider purchase other network elements or retail services of the utility if the telecommunications provider uses the network elements platform of the utility that consists solely of combined network elements and the use is for the purpose of providing telecommunications service to an end-user customer. Other requirements apply to the use of a network elements platform, including the requirement that a large price-regulated telecommunications utility must provide the platform without any disruption of services to end-user customers.



Finally, the bill requires the PSC to issue an order establishing a compliance plan for each large price-regulated telecommunications utility that includes standards for the utility to provide nondiscriminatory access to the utility's services and network elements to the utility's wholesale customers. The plan must also include procedures for measuring the utility's compliance with the standards and requirements for the utility to make specified monetary payments to a wholesale customer if the utility fails to comply with a standard. The PSC must issue the order no later than nine months after the effective date of the bill.

### ***Price increase formula***

Under current law, a price-regulated telecommunications utility may increase its service rates according to a formula that is based on annual changes in the gross domestic product price index (GDPPI). Under the formula, the change in the revenue weighted price indexes for all services that are subject to price regulation may not exceed the difference between the most recent annual change in GDPPI and an offset percentage. In addition, the offset percentage is subject to the following: 1) a penalty adjustment that increases the offset percentage for inadequate service or insufficient investment by a telecommunications utility; and 2) an incentive adjustment that decreases the offset percentage for encouraging infrastructure investment by a telecommunications utility.

The amount of the offset percentage and the penalty and incentive adjustments depend on the size of a telecommunications utility. For a large price-regulated telecommunications utility, the offset percentage is 3%, which is subject to a penalty adjustment that may not exceed 2% and an incentive adjustment that may not exceed 2%. The PSC is required to promulgate rules that establish the penalty and incentive adjustments.

This bill changes the penalty adjustment to the offset percentage for large price-regulated telecommunications utilities. Under the bill, the penalty adjustment may not exceed 10%.

### ***Mandatory credits***

The bill requires a large price-regulated telecommunications utility to issue credits to end-user customers if the utility fails to satisfy requirements regarding each of the following: 1) disruption of service; 2) failure to install local exchange service; and 3) failure to keep service or repair appointments. The amount of a credit depends on the type of requirement and whether a residential or business telephone line is affected. The bill also allows the PSC, upon complaint or its own motion, to issue an order requiring telecommunications utilities, in addition to large price-regulated telecommunications utilities, to issue credits for failing to satisfy the above requirements. The PSC may issue such an order if it is necessary to protect the public interest.

The above requirements regarding the credits do not apply after the first day of the 60th month after the bill's effective date, unless the PSC, after notice and hearing, issues an order providing the requirements apply after that date. The PSC may issue such an order if it is necessary to protect the public interest.

***Wholesale service standards***

An analysis of these changes will be provided in a subsequent version of this draft.

***Small business rates***

An analysis of these changes will be provided in a subsequent version of this draft.

***PSC authority regarding payments by telecommunications providers***

An analysis of these changes will be provided in a subsequent version of this draft.

***Sales practices of telecommunications providers***

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the telecommunications services must provide independent confirmation of the order.

This bill provides that a person may request a telecommunications service orally, in writing, or by electronic means but specifies that a telecommunications provider may not provide services to a person who orders the service by any electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. The bill prohibits a person from enrolling a customer in any telecommunications service in which the customer did not affirmatively request to be enrolled. The bill specifies that a request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular service. The bill also prohibits the practice known as "slamming." A person engages in slamming by making a change in a customer's selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

In addition to the slamming prohibitions created under this bill, federal law also prohibits slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under rules promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC rules prohibiting slamming including the remedies and penalties specified under those rules. This bill directs the department of agriculture, trade and consumer protection (DATCP) to notify the FCC of its intention to administer the FCC rules. It also requires DATCP to promulgate rules that are consistent with the FCC regulations rules.

↑  
INSERT 5A

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 20.155 (1) (Ls) of the statutes is created to read:

2       20.155 (1) (Ls) *Telecommunications provider payments.* All moneys received  
3 from payments by telecommunications providers under ss. 196.219 (3m) (c) and  
4 196.37 (2) for purposes determined by the commission under ss. 196.219 (3m) (c) and  
5 196.37 (2).

6       **SECTION 2.** 100.207 (3) (a) of the statutes is amended to read:

7       100.207 (3) (a) A person may not engage in negative option billing or negative  
8 enrollment of telecommunications services, including unbundled  
9 telecommunications services. A person may not bill a customer for, or enroll a  
10 customer in, any telecommunications service that the customer did not affirmatively  
11 order unless that service is required to be provided by law, the federal  
12 communications commission, or the public service commission. A customer's failure  
13 to refuse a person's proposal to provide a telecommunications service is not an  
14 affirmative request for that telecommunications service. A customer's request to be  
15 enrolled in a particular telecommunications service is an affirmative request to be  
16 enrolled only in that particular telecommunications service.

17       **SECTION 3.** 100.207 (3) (d) of the statutes is created to read:

18       100.207 (3) (d) A person may not make a change in a customer's selection of a  
19 telecommunications service provider unless the customer affirmatively requests  
20 that the person take such action.

21       **SECTION 4.** 100.207 (3m) of the statutes is created to read:

1           100.207 (3m) REQUESTS FOR SERVICE. (a) A customer may affirmatively request  
2 a telecommunications service orally, in writing, or by electronic means.

3           (b) Notwithstanding par. (a), a person may not provide a telecommunications  
4 service to a customer who orders the service by an electronic means that  
5 simultaneously activates that service.

6           SECTION 5. 100.207 (5) of the statutes is amended to read:

7           100.207 (5) TERRITORIAL APPLICATION. ~~Subsections (2) to (4) apply~~ This  
8 subsection applies to any practice directed to any person in this state.

9           SECTION 6. 100.207 (6) (b) 1. of the statutes is amended to read:

10          100.207 (6) (b) 1. The department of justice, after consulting with the  
11 department of agriculture, trade and consumer protection, or any district attorney  
12 upon informing the department of agriculture, trade and consumer protection, may  
13 commence an action in circuit court in the name of the state to restrain by temporary  
14 or permanent injunction any violation of this section. Injunctive relief may include  
15 an order directing telecommunications providers, as defined in s. 196.01 (8p), to  
16 discontinuc telecommunications service provided to a person violating this section  
17 or ch. 196. Temporary injunctive relief may include an order requiring that a person  
18 who provides telecommunications services deposit in an escrow account any  
19 payments that the provider has received or is expected to receive from customers as  
20 a result of practices that may violate this section or ch. 196. Before entry of final  
21 judgment, the court may make such orders or judgments as may be necessary to  
22 restore to any person any pecuniary loss suffered because of the acts or practices  
23 involved in the action if proof of these acts or practices is submitted to the satisfaction  
24 of the court.

25          SECTION 7. 100.207 (6) (c) of the statutes is amended to read:

1        100.207 (6) (c) Any person who violates ~~subs. (2) to (4)~~ this section shall be  
2        required to forfeit not less than \$25 nor more than \$5,000 \$10,000 for each offense.  
3        Each day of violation constitutes a separate offense. Forfeitures under this  
4        paragraph shall be enforced by the department of justice, after consulting with the  
5        department of agriculture, trade and consumer protection, or, upon informing the  
6        department, by the district attorney of the county where the violation occurs.

7        **SECTION 8.** 100.207 (6) (em) 1. of the statutes is amended to read:

8        100.207 (6) (em) 1. Before preparing any proposed rule under ~~this section~~ par.  
9        (e), the department shall form an advisory group to suggest recommendations  
10       regarding the content and scope of the proposed rule. The advisory group shall  
11       consist of one or more persons who may be affected by the proposed rule, a  
12       representative from the department of justice, and a representative from the public  
13       service commission.

14       **SECTION 9.** 100.207 (6) (g) of the statutes is created to read:

15       100.207 (6) (g) Nothing in this subsection precludes the department from  
16       seeking a remedy or penalty in accordance with the rules promulgated under sub.  
17       (7). Practices in violation of sub. (3) may also constitute a violation of the rules  
18       promulgated under sub. (7).

19       **SECTION 10.** 100.207 (7) of the statutes is created to read:

20       100.207 (7) ADMINISTRATION OF FEDERAL COMMUNICATIONS COMMISSION RULES.  
21       The department shall administer and enforce the federal communications  
22       commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110  
23       to 64.1190 and shall notify the federal communications commission, in accordance  
24       with 47 CFR 64.1110 (a), of its intention to administer and enforce those rules and  
25       remedies. In addition to the rules promulgated under sub. (6) (e), the department

INSERT 9-2

1 shall promulgate rules that are consistent with the commission's unauthorized  
2 carrier change rules and remedies under 47 CFR 64.1110 to 64.1190.

3 SECTION 11. 196.196 (1) (c) 1. of the statutes is amended to read:

4 196.196 (1) (c) 1. A price-regulated telecommunications utility may not  
5 increase its rates for services under par. (a), except for basic message  
6 telecommunications service, for a period of 3 years after electing to become price  
7 regulated. Following the initial 3-year period for services under par. (a), except for  
8 basic message telecommunications service, and at any time for basic message  
9 telecommunications service, a price-regulated telecommunications utility may  
10 increase its rates for those services to the extent that the change in the revenue  
11 weighted price indices does not exceed 2 percentage points less than the most recent  
12 annual change in the gross domestic product price index, as published by the federal  
13 government. The commission shall, by rule, create a penalty mechanism for up to  
14 a one percentage point increase in the percentage offset for inadequate service  
15 provided by or insufficient investment made by a price-regulated  
16 telecommunications utility. The commission shall, by rule, create an incentive  
17 mechanism for up to a one percentage point decrease in the percentage offset to  
18 encourage infrastructure investment by the price-regulated telecommunications  
19 utility. For a telecommunications utility with more than 500,000 access lines in use  
20 in this state at the time of electing to become price regulated, the percentage offset  
21 to the change in the gross domestic product price index shall be 3 percentage points  
22 and, the penalty mechanism shall be up to a 10 percentage point increase, and the  
23 incentive mechanism shall be up to a 2 percentage points point decrease. No earlier  
24 than 6 years after September 1, 1994, and no more frequently than every 3 years  
25 thereafter, the commission may, following notice and an opportunity for hearing, by

rule increase or decrease the gross domestic product price index percentage offset by a maximum of one percentage point in any 12-month period to reflect any statewide changes in the productivity experience of the telecommunications industry. The commission shall promulgate rules to identify the factors that the commission may consider in determining changes in the productivity experience of the telecommunications industry. If application of the price regulation index formula achieves a negative result, prices shall be reduced so that the cumulative price change for services under par. (a), including prior price reductions in these services, achieves the negative result.

**SECTION 12.** 196.196 (1) (em) of the statutes is created to read:

196.196 (1) (em) 1. In this paragraph, "small business rates" means rates for standard business access lines and usage by small businesses with no more than 3 access lines.

2. Notwithstanding pars. (c), (d), and (e), the commission shall investigate whether to allow price-regulated telecommunications utilities to increase small business rates in geographic areas specified by the commission. The commission may allow such an increase in a geographic area only if the commission determines that effective competition <sup>as defined in rules promulgated by the commission</sup> exists in the geographic area. If the commission makes such a determination, a price-regulated telecommunications utility may petition the commission to increase small business rates in the geographic area. A price-regulated telecommunications utility shall include with a petition a statement that, if the petition is granted, the utility agrees to allow customers with whom the utility has contracts for small business rates to terminate the contracts as provided in subd. 3. The commission may not grant a petition filed under this subdivision until after the commission's order under s. 196.219 (3m) (b) goes into effect.

INSERT 10-25

1           3. Notwithstanding any provision in a tariff filed under s. 196.194 (1), if the  
2 commission grants a petition filed by a price-regulated telecommunications utility  
3 under subd. 2., a customer of the utility may, no later than one year after the effective  
4 date of the commission's order granting the petition, terminate, without penalty, a  
5 contract with the utility for small business rates before the expiration of the contract  
6 if the customer terminates the contract for the purpose of entering into a new  
7 contract for small business rates with another telecommunications provider.  
8 Termination of a contract under this subdivision is effective when the  
9 price-regulated telecommunications utility receives oral or written notice from a  
10 customer.

11           4. If the commission grants a petition filed by a price-regulated  
12 telecommunications utility under subd. 2., the utility shall give notice to its  
13 customers that are subject to small business rates that describes the small business  
14 rate increase approved by the commission and the right of customers to terminate  
15 contracts under subd. 3. The notice shall be published in a newspaper of general  
16 circulation in the affected geographic area within a reasonable time period after the  
17 commission grants the petition, and shall be included in or on the bill of each  
18 customer that is subject to small business rates in the billing first following the  
19 commission's granting of the petition.

\*\*\*NOTE: Although not included in the instructions, I based the above  
requirements on s. 196.196 (1) (f), stats. Is it okay?

20           **SECTION 13.** 196.196 (1) (g) 1. (intro.) of the statutes is amended to read:

21           196.196 (1) (g) 1. (intro.) Five years after a telecommunications utility elects  
22 to become a price-regulated telecommunications utility or, if subd. 4. applies, within  
23 the dates specified in that subdivision, the commission shall hold a hearing, and at



1 any time thereafter, upon complaint or on the commission's own motion, the  
2 commission may hold a hearing, to determine whether it is in the public interest to  
3 suspend one or more of the provisions of this subsection, except par. (em), as it applies  
4 to a price-regulated telecommunications utility or to approve an alternative  
5 regulatory method for that utility. In making a determination under this  
6 subdivision, the commission shall identify all of the following:

7 **SECTION 14.** 196.196 (3) (a) of the statutes is amended to read:

8 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.  
9 196.19 (1m), 196.194, 196.195, 196.1995, 196.20 (1m), 196.204, 196.209, and  
10 196.219, the commission may not have jurisdiction over the prices or terms and  
11 conditions for the offering of any other services, including new telecommunications  
12 services, offered by a price-regulated telecommunications utility.

13 **SECTION 15.** 196.196 (6) (title) of the statutes is created to read:

14 196.196 (6) (title) MANDATORY CREDITS.

15 **SECTION 16.** 196.196 (6) (a) of the statutes is created to read:

16 196.196 (6) (a) *Definitions.* In this subsection:

17 1. "Customer" means any person, including a telecommunications provider,  
18 that uses the services, products, or facilities provided by a telecommunications  
19 utility.

20 2. "End-user customer" means a person that receives local exchange service  
21 from a telecommunications utility or another telecommunications provider, and that  
22 does not resell the local exchange service or use such service to provide  
23 telecommunications service to any other customer.

1           3. "Large price-regulated telecommunications utility" means a  
2 price-regulated telecommunications utility that has more than 500,000 access lines  
3 in use in this state at the time of electing to become price regulated.

4           4. "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

5           5. "Telecommunications utility" means a large price-regulated  
6 telecommunications utility or a telecommunications utility specified by the  
7 commission in an order under par. (f).

8           **SECTION 17.** 196.196 (6) (b) of the statutes is created to read:

9           196.196 (6) (b) *Service disruptions.* 1. If the local exchange service of an  
10 end-user customer is disrupted by a telecommunications utility and remains  
11 disrupted for more than 24 hours after the disruption is reported to the  
12 telecommunications utility, the utility shall issue a credit in an amount specified in  
13 subd. 2. to the end-user customer unless one of the following applies:

14           a. The disruption is caused by the end-user customer or the end-user  
15 customer's telecommunications equipment.

16           b. The disruption is caused by a natural disaster, act of God, military action,  
17 war, insurrection, or riot.

18           c. The end-user customer fails to keep an appointment to repair the disruption  
19 and the utility is not able to obtain access to repair the disruption.

20           2. If service is disrupted for 24 hours or more, the amount of the credit under  
21 subd. 1. shall be \$35 for each primary residential line, \$5 for each other residential  
22 line, \$135 for each main billing business line, and \$25 for each other business line,  
23 for each 24-hour period, or portion of a 24-hour period, in which service is disrupted.

24           **SECTION 18.** 196.196 (6) (c) of the statutes is created to read:

1       196.196 (6) (c) *Failure to install local exchange service.* 1. Except as provided  
2       in subd. 2., if a telecommunications utility fails to install local exchange service or  
3       related equipment within 5 business days after an end-user customer places an  
4       order for the service or equipment, the telecommunications utility shall issue a credit  
5       to the end-user customer in an amount equal to \$35 for each residential line and  
6       \$135 for each business line for each business day, or portion of a business day, beyond  
7       the 5th business day that the service or equipment is not installed.

8       2. Subdivision 1. does not apply to any of the following:

9       a. The installation of service in an undeveloped area where there are no  
10      telecommunications facilities.

11      b. A failure to install that is caused by a natural disaster, act of God, military  
12      action, war, insurrection, or riot.

13      c. A failure to install resulting from the end-user customer voluntarily  
14      changing the installation date without providing notice 48 hours before the  
15      originally scheduled installation date.

16      **SECTION 19.** 196.196 (6) (d) of the statutes is created to read:

17      196.196 (6) (d) *Failure to keep appointments.* 1. A telecommunications utility  
18      shall do all of the following:

19      a. Except as provided in subd. 2., if the utility fails to keep an appointment to  
20      install service or make on-premises or outside repairs for an end-user customer,  
21      issue a \$35 credit for each residential line and a \$135 credit for each business line  
22      that is affected by the failure.

23      b. Inform an end-user customer about the utility's obligation to issue a credit  
24      under subd. 1. a. at the time an appointment is made.

1           2. Subdivision 1. a. does not apply if the telecommunications utility provides  
2           the end-user customer with 24-hour advance notice that the utility is not able to  
3           keep the appointment or if a natural disaster, act of God, military action, war,  
4           insurrection, or riot prevents the utility from keeping the appointment.

5           **SECTION 20.** 196.196 (6) (e) of the statutes is created to read:

6           196.196 (6) (e) *Credit procedure.* 1. If a telecommunications utility is required  
7           to provide a credit to an end-user customer under this subsection, the  
8           telecommunications utility shall issue the credit by adjusting the end-user  
9           customer's first bill following the event for which the credit is required.

10          2. Except for an end-user customer report under par. (b) 1., a  
11          telecommunications utility may not require an end-user customer to provide any  
12          notice as a condition for issuing a credit required under this subsection.

13          **SECTION 21.** 196.196 (6) (f) of the statutes is created to read:

14          196.196 (6) (f) *Applicability.* If necessary to protect the public interest, the  
15          commission may, upon complaint or its own motion, issue an order specifying  
16          telecommunications utilities in addition to large price-regulated  
17          telecommunications utilities that are subject to the requirements of this subsection.

18          **SECTION 22.** 196.196 (6) (g) of the statutes is created to read:

19          196.196 (6) (g) *Other remedies available.* The remedies under this subsection  
20          are not exclusive.

21          **SECTION 23.** 196.196 (6) (h) of the statutes is created to read:

22          196.196 (6) (h) *Sunset.* 1. Except as provided in subd. 2., this subsection does  
23          not apply after the first day of the 60th month beginning after the effective date of  
24          this paragraph .... [revisor inserts date].

1           2. If necessary to protect the public interest, the commission may, after notice  
2 and hearing, issue an order providing that this subsection applies after the date  
3 specified in subd. 1.

4           **SECTION 24.** 196.1995 of the statutes is created to read:

5           **196.1995 Interconnection, collocation, and network elements. (1)**

6           **DEFINITIONS.** In this section:

7           (a) “End-user customer” has the meaning given in s. 196.196 (6) (a) 2.

8           (b) “Large price-regulated telecommunications utility” means a  
9 price-regulated telecommunications utility that has more than 500,000 access lines  
10 in use in this state at the time of electing to become price regulated.

11          (c) “Local exchange service” has the meaning given in s. 196.50 (1) (b) 1.

12          (d) “Network element” means a facility or equipment used to provide  
13 telecommunications service. “Network element” includes features, functions, and  
14 capabilities that are provided by means of such a facility or equipment, including  
15 subscriber numbers, databases, signaling systems, and information sufficient for  
16 bills or collections or that are used in transmitting, routing, or otherwise providing  
17 telecommunications service.

18          (e) “Wholesale customer” means a telecommunications provider that uses the  
19 services, products, or facilities of a large price-regulated telecommunications utility  
20 to provide telecommunications service to an end-user customer.

21          **(2) GENERALLY.** (a) A large price-regulated telecommunications utility shall  
22 provide interconnection, collocation, and network elements to telecommunications  
23 providers in a manner that promotes the maximum development of competitive  
24 telecommunications service offerings in this state.

1 (b) A large price-regulated telecommunications utility shall provide  
2 interconnection, collocation, and network elements in a manner specified by a  
3 telecommunications provider if that manner is technically feasible. A manner is  
4 presumed to be technically feasible if the large price-regulated telecommunications  
5 utility or any of its affiliates offer or provide interconnection, collocation, and  
6 network elements in that manner in any jurisdiction.

7 (3) COLLOCATION. (a) A large price-regulated telecommunications utility shall  
8 provide physical or virtual collocation of any type of equipment for interconnection  
9 with, or access to the network elements of, the utility or any collocated  
10 telecommunications provider at the utility's premises, at rates and on terms and  
11 conditions that are just, reasonable, and nondiscriminatory. In this paragraph,  
12 "equipment" includes optical transmission equipment, multiplexers, remote  
13 switching modules, and cross-connects between the facilities or equipment of other  
14 collocated telecommunications providers. In this paragraph, "equipment" also  
15 includes microwave transmission facilities on the exterior or interior of any premises  
16 owned or controlled by a large price-regulated telecommunications utility, unless  
17 the large price-regulated telecommunications utility demonstrates to the  
18 satisfaction of the commission that physical or virtual collocation of such facilities  
19 is not feasible due to technical issues or space limitations.

20 (b) Upon request, a large price-regulated telecommunications utility shall  
21 provide for each of the following in a manner that is consistent with safety and  
22 network reliability standards:

23 1. Cross-connects between the facilities or equipment of collocated  
24 telecommunications providers that are the most reasonably direct and efficient, as  
25 determined by the collocated telecommunications provider.

1           2. Cross-connects between the facilities or equipment of a collocated  
2 telecommunications provider and the network elements platform or transport  
3 facilities of a noncollocated telecommunications provider.

4           (4) NETWORK ELEMENTS. (a) Upon the request of a telecommunications provider,  
5 a large price-regulated telecommunications utility shall provide network elements  
6 on a bundled or unbundled basis, as requested by the telecommunications provider,  
7 at any point that the telecommunications provider determines is technically feasible,  
8 and in a manner that allows the telecommunications provider to combine the  
9 network elements to provide new or existing telecommunications service. A large  
10 price-regulated telecommunications utility must provide network elements under  
11 this paragraph at rates, and on terms and conditions, that are just, reasonable, and  
12 nondiscriminatory.

13           (b) A large price-regulated telecommunications utility may not require a  
14 wholesale customer to purchase network elements on an unbundled basis if the  
15 utility ordinarily combines the elements to provide service to the utility's own  
16 end-user customers, except at the direction of a telecommunications provider that  
17 requests unbundled network elements.

18           (c) At the direction of a telecommunications provider that requests network  
19 elements, a large price-regulated telecommunications utility shall provide network  
20 elements on a bundled or unbundled basis, and shall combine any sequence of  
21 network elements requested by the telecommunications provider that the utility  
22 ordinarily combines for itself.

23           (d) If a telecommunications provider uses the network elements platform of a  
24 large price-regulated telecommunications utility that consists solely of combined  
25 network elements and the use is for the purpose of providing telecommunications

1 service to an end-user customer, the large price-regulated telecommunications  
2 utility may not require that the telecommunications provider purchase other  
3 network elements or retail services of the utility. A telecommunications provider  
4 may order the network elements platform on an as-is basis for an end-user customer  
5 that has received local exchange service from the large price-regulated  
6 telecommunications utility and the telecommunications provider may direct the  
7 utility not to change any of the features previously selected by the end-user  
8 customer. A large price-regulated telecommunications utility that provides a  
9 network elements platform to a telecommunications provider shall provide the  
10 platform without any disruption of services to end-user customers.

11 (5) COMPLIANCE PLAN. (a) No later than the first day of the 9th month beginning  
12 after the effective date of this paragraph .... [revisor inserts date], the commission  
13 shall, after notice and, if requested, a hearing, issue an order establishing a  
14 compliance plan for each large price-regulated telecommunications utility that  
15 includes each of the following:

16 1. Standards for the utility to provide nondiscriminatory access to the utility's  
17 services and network elements, including the utility's operational support system,  
18 to the utility's wholesale customers. The access must be at least equal in quality to  
19 the access provided by the utility to itself or to any subsidiary, affiliate, or other  
20 person to which the utility provides interconnection.

21 2. Procedures for measuring the large price-regulated telecommunications  
22 utility's compliance with the standards under subd. 1.

23 3. Requirements for the utility to make specified monetary payments to a  
24 wholesale customer if the utility fails to comply with the standards under subd. 1.

INSERT 19-15



INSERT 20-2

(b) The requirements of this subsection apply in addition to any requirements under an interconnection agreement.

**SECTION 25.** 196.219 (1) (c) of the statutes is created to read:

196.219 (1) (c) "Wholesale services" include preordering, ordering and provisioning, maintenance and repair, network performance, unbundled elements, operator services and directory assistance, system performance, service center availability, billing, and any other service that the commission specifies by order.

\*\*\*\*NOTE: The above allows the PSC to specify additional wholesale services by order. As drafted, the PSC may, but is not required, to hold a hearing before issuing such an order. Is that okay?

\*\*\*\*NOTE: The instructions are confusing on whether and when the PSC may issue an order referenced above. Is it your intent that the PSC may only be allowed to issue the order no later than 90 days after the effective date of the bill? And that, after that deadline, the PSC may only promulgate rules that specify additional wholesale services? If so, why? Also, if that is your intent, the above definition must be redrafted.

\*\*\*\*NOTE: How is "provisioning" different from "providing"? Does "provisioning" have some special meaning in the telecommunications industry?

**SECTION 26.** 196.219 (3) (p) of the statutes is created to read:

196.219 (3) (p) Fail to provide wholesale services to another telecommunications provider on the same terms and conditions that the telecommunications utility or telecommunications provider provides to itself or to any of its affiliates.

\*\*\*\*NOTE: The above prohibition applies to a "telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange telecommunications services". See s. 196.219 (3) (intro.). Is that okay?

**SECTION 27.** 196.219 (3m) of the statutes is created to read:

196.219 (3m) WHOLESALE SERVICE STANDARDS. (a) In this subsection:

1. "Repeat trouble report" means a trouble report by a wholesale customer who has previously made a trouble report regarding the same wholesale service.

1           2. "Trouble report" means a report to a telecommunications provider by a  
2           wholesale customer about a problem regarding a wholesale service provided by the  
3           telecommunications provider.

*\*\*\*NOTE: Are the above definitions okay?*

4           (b) No later than the first day of the 4th month beginning after the effective date  
5           of this paragraph ... [revisor inserts date], the commission shall, by order, establish  
6           nondiscriminatory standards that, except as provided in par. (d), require a  
7           telecommunications provider to do all of the following:

*\*\*\*\*NOTE: It's not necessary to specify that the standards established by the PSC must be reasonable. In economic and social welfare regulation, the due process clauses of the federal and state constitutions limit the substantive power of the state (including the PSC) to pursue only legitimate state objectives by rational means. Because the PSC's standards must be rational, I don't think anything else is gained by also requiring them to be reasonable. However, if you have specific requirements in mind that also should apply to the standards, please let me know.*

*\*\*\*\*NOTE: As drafted, the PSC may, but is not required, to hold a hearing before issuing the order. Is that okay?*

8           1. Provision wholesale services and related facilities in a timely manner.

*\*\*\*\*NOTE: As noted above, how is "provision" different from "provide"? Are you talking about the initiation of wholesale service to a customer? Also what is intended by provisioning a facility? Does it mean to provide access, or to actually transfer the facility to someone else? Also, I assumed you are talking about facilities that have some relationship to wholesale service, so I referred to facilities "related" to wholesale service. Is that okay?*

9           2. Repair wholesale service outages in a timely manner.

10          3. Minimize the frequency of trouble reports, including trouble reports within  
11          30 days after initiating a wholesale service.

12          4. Minimize the frequency of repeat trouble reports.

13          (c) The order under par. (b) may require a telecommunications provider that  
14          fails to comply with the order to make payments to another telecommunications  
15          provider that is affected by the failure to comply or to the commission in amounts and  
16          according to schedules that are specified in the order. The commission may use the

1 payments for any purpose determined by the commission relating to maintaining or  
2 improving telecommunications service quality, including compensating persons who  
3 are affected by the failure to comply with the order.

\*\*\*\*NOTE: The above is my attempt to describe the "self-executing remedy payments," which is a term that I don't think has a commonly understood meaning.

\*\*\*\*NOTE: I think you need to specify a purpose for which the PSC may use the payments. Is the above purpose okay?

4 (d) The commission may, upon its own motion or a petition from an interested  
5 person, issue an order exempting a telecommunications provider from the order or  
6 any requirement of the order issued under par. (b), or imposing a requirement that  
7 is less stringent than a requirement of the order issued under par. (b), if the  
8 commission finds, after notice and hearing, that an order under this paragraph is in  
9 the public interest and the telecommunications provider that is the subject of the  
10 order has not violated this section or any of the following:

11 1. A provision of the federal Telecommunications Act of 1996 relating to  
12 wholesale service.

13 2. A regulation or order issued under the federal Telecommunications Act of  
14 1996 relating to wholesale service.

15 3. An interconnection agreement approved by the commission.

16 (e) After the commission issues the order under par. (b), the commission may  
17 promulgate rules that implement the requirements of this subsection.

18 **SECTION 28.** 196.37 (2) of the statutes is amended to read:

19 196.37 (2) If the commission finds that any measurement, regulation, practice,  
20 act or service is unjust, unreasonable, insufficient, preferential, unjustly  
21 discriminatory or otherwise unreasonable or unlawful, or that any service is  
22 inadequate, or that any service which reasonably can be demanded cannot be

1 obtained, the commission shall determine and make any just and reasonable order  
2 relating to a measurement, regulation, practice, act or service to be furnished,  
3 imposed, observed and followed in the future. An order under this subsection against  
4 a telecommunications provider may require the telecommunications provider to  
5 make payments in amounts specified in the order to persons affected by the  
6 measurement, regulation, practice, act, or service or to the commission. The  
7 commission may use any payment received under this subsection for any purpose  
8 determined by the commission relating to maintaining or improving  
9 telecommunications service quality, including compensating persons who are  
10 affected by the measurement, regulation, practice, act, or service.

\*\*\*\*NOTE: I think you need to specify a purpose for which the PSC may use the  
payments. Is the above purpose okay?

11 **SECTION 29. Initial applicability.**

12 (1) The treatment of section 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em)  
13 1., and (g), and (7) of the statutes first applies to changes in telecommunications  
14 services made on the effective date of this subsection.

15 (2) The treatment of section 196.196 (6) (b) of the statutes first applies to  
16 reports made on the effective date of this subsection.

17 (3) The treatment of section 196.196 (6) (c) of the statutes first applies to orders  
18 made on the effective date of this subsection.

19 (4) The treatment of section 196.37 (2) of the statutes first applies to orders  
20 issued on the effective date of this subsection.

21 **SECTION 30. Effective dates.** This act takes effect on the day after publication,  
22 except as follows:

INSERT 23-10

## SECTION 30

(1) The treatment of section 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em) 1., and (g), and (7) of the statutes and SECTION 29 (1) of this act take effect on the first day of the 10th month beginning after publication. *P.R.*

**(END)**

**2001-2002 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4912/P2ins  
MDK:.....

✓  
**INSERT 1-13:**

regulating large price-regulated telecommunications utilities, wholesale telecommunications service, small business telecommunications rates, telecommunications sales practices, and cross subsidization by small telecommunications providers; requiring mandatory credits for certain telecommunications customers; allowing the public service commission to order payments by certain telecommunications providers; requiring the public service commission to report on telecommunications competition; extending the time limit for emergency rule procedures;

**INSERT 2A:**

for large price-regulated telecommunications providers

**INSERT 2B:**

8) creates exceptions on cross subsidization for certain small telecommunications utilities; and 9) requires the PSC to report to the legislature on telecommunications competition.

**INSERT 5A:**

✓ ***Cross subsidization***

An analysis of these changes will be provided in a subsequent version of this draft.

✓ ***PSC report on telecommunications competition***

An analysis of these changes will be provided in a subsequent version of this draft.

**INSERT 9-2:**

X  
**SECTION 1.** 196.01 (8) of the statutes is amended to read:

196.01 (8) "Small telecommunications utility" means, except as provided in s. 196.204 (1r) (a) 5. and (3) (b), any telecommunications utility or a successor in interest of a telecommunications utility that provided landline local and access

telecommunications service as of January 1, 1984, and that has less than 50,000 access lines in use in this state.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 29<sup>ss. 14 to 22, 39</sup>; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16.

SECTION 2. 196.025 (6) of the statutes is created to read:

196.025 (6) (a) In this subsection, "intrastate telecommunications service provider" <sup>means</sup> any telecommunications provider that provides intrastate telecommunications service.

\*\*\*NOTE: I understand that your intent is to include providers of Internet access service and that "telecommunications service" as defined in s. 196.01 (9m), includes such service. However, if there is any doubt, you might want to explicitly refer to providers of Internet access service.

\*\*\*NOTE: The above refers to intrastate, rather than local, telecommunications service. Is that okay? Also, the definition applies to any such provider, so it isn't necessary to identify the different types of providers.

(b) The commission shall investigate competition among intrastate telecommunications service providers during the 5-year period after the effective date of this paragraph ... <sup>from</sup> [revisor inserts date], and submit a report to the appropriate standing committees of the legislature under s. 13.172 (3) that assesses the relationship between the regulatory and competitive status of all intrastate telecommunications providers, including an assessment of all of the following:

1. The status of competition among intrastate telecommunications service providers, including all of the following:

<sup>Subd. 1.</sup>  
\*\*\*NOTE: ~~The above~~ incorporates your 2nd bullet point.

a. The number of different intrastate telecommunications providers in different product and geographic markets in this state as compared to national data.

<sup>Subd. 1. a.</sup>  
\*\*\*NOTE: ~~The above~~ incorporates your 4th bullet point.

\*\*\*NOTE: What is a product market? How is it different than a geographic market?

1           b. The prices of all telecommunications services offered by the different  
2 intrastate telecommunications service providers in this state as compared to  
3 national averages.

      Subd. 1. b.  
      \*\*\*\*NOTE: ~~The above~~ incorporates your 6th bullet point. I don't think it's necessary  
to refer to prices within each market, because the above broadly refers to all prices.

4           c. The market power of the different intrastate telecommunications providers  
5 in this state as compared to national data.

      Subd. 1. c.  
      \*\*\*\*NOTE: ~~The above~~ incorporates your 5th bullet point.

      \*\*\*\*NOTE: What is "market power"? Will the PSC know how to assess this?

6           2. The differences in the level of regulation applicable to the different intrastate  
7 telecommunications service providers in this state.

      Subd. 2.  
      \*\*\*\*NOTE: ~~The above~~ incorporates your 3rd bullet point.

8           3. A comparison of the retail service quality credit plans offered by the different  
9 intrastate telecommunications service providers in this state and a comparison  
10 between such plans that are offered in this state and elsewhere in the nation.

      Subd. 3.  
      \*\*\*\*NOTE: ~~The above~~ incorporates your 7th bullet point.

      \*\*\*\*NOTE: Will the PSC know what a "retail service quality credit plan" is?

11          4. The barriers to effective competition, as defined in rules promulgated by the  
12 commission, in markets for telecommunications services offered by intrastate  
13 telecommunications providers, including the barriers to entry into different product  
14 and geographic markets, and including ~~an assessment of~~ whether the barriers are  
15 unreasonable and whether any barrier results from anticompetitive behavior of any  
16 intrastate telecommunications provider.

      Subd. 4.  
      \*\*\*\*NOTE: ~~The above~~ combines your 1st and 10th bullet points. Note that the  
proposed legislation under your 1st bullet point is included in par. (c) ~~below~~.

      \*\*\*\*NOTE: Is it really necessary to distinguish between barriers to effective  
competition and barriers to entry?

      \*\*\*\*NOTE: See the NOTE ~~above~~ to Subd. 1. a. regarding product versus geographic markets.

      \*\*\*\*NOTE: Regarding the rules for the definition of "effective competition," see the  
NOTE following the creation of s. 196.195 (1g) ~~below~~.



1           5. The total number of different types of complaints by residential customers  
2 to the commission or the department of agriculture, trade and consumer protection  
3 regarding each intrastate telecommunications provider.

\*\*\*\*NOTE: <sup>Subd. 5.</sup> The above incorporates your 8th bullet point. See also subd. 6. ~~below~~.

\*\*\*\*NOTE: Instead of limiting the assessment to specified complaints (service, slamming, and cramming), why not require the PSC to assess the different types, as I <sup>have</sup> done ~~above~~? Also, I required the report to include the complaints made to DATCP. Is that okay? <sup>in subd. 5.</sup>

4           6. For each intrastate telecommunications provider, of the total number of  
5 different types of complaints under subd. 1., the number of different types of  
6 complaints that are due to circumstances that are the fault of the intrastate  
7 telecommunications provider.

8           7. The availability, price, and quality of unbundled network elements,  
9 interconnection, and collocation provided by the different intrastate  
10 telecommunications providers.

\*\*\*\*NOTE: <sup>Subd. 7.</sup> The above incorporates your 9th bullet point. See also subd. 8. ~~below~~.

\*\*\*\*NOTE: The compliance plan under subd. 8, ~~below~~ applies only to large price-regulated telecommunications utilities. However, I made subd. 7. ~~above~~ apply to any intrastate telecommunications provider. Is that okay?

11           8. The effectiveness of the compliance plans established in the order under s.  
12 196.1995 (5) (a).

13           9. Any other factor that the commission determines is relevant to competition  
14 among intrastate telecommunications providers.

\*\*\*\*NOTE: <sup>Subd. 9.</sup> The above makes it explicit that the specified factors are not exclusive.

15           (c) The report under par. (b) shall include any proposals for legislation  
16 recommended by the commission, including any proposals for remedying  
17 anticompetitive behavior of intrastate telecommunications providers. If the  
18 proposals do not include recommendations for requiring intrastate  
19 telecommunications providers to structurally separate wholesale and retail

1 operations into separate, independently operated affiliates, the report shall indicate  
2 the commission's reasons for not making such a recommendation.

\*\*\*\*NOTE: Should the recommendation on structural separation only apply to large  
price-regulated telecommunications utilities? As drafted, it applies to any intrastate  
telecommunications provider.

3 **SECTION 3.** 196.195 (1) of the statutes is renumbered 196.195 (1r).

4 **SECTION 4.** 196.195 (1g) of the statutes is created to read:

5 196.195 (1g) **DEFINITION.** In this section, "effective competition" has the  
6 meaning given in rules promulgated by the commission.

\*\*\*\*NOTE: I decided the best approach to the definition of "effective competition" is  
to require the PSC to promulgate a definition only with respect to those statutes that are  
relevant to your purposes. Therefore, you will not affect the meaning of "effective  
competition" regarding electricity markets in ss. 196.025 (5) (ar) (intro.), 196.485 (1) (ge),  
and 196.491 (2) (a) 12., stats. Also, note the nonstatutory provisions of the bill that impose  
a deadline for the PSC's submission of proposed rules and that require the PSC to use  
emergency rule-making procedures before the permanent rules go into effect.

7 **INSERT 10-25:**

\*\*\*\*NOTE: Regarding the rules for the definition of "effective competition," see the  
NOTE following the creation of s. 196.195 (1g) *above*.

8 **INSERT 19-15:**

\*\*\*\*NOTE: Is the above deadline consistent with your other deadlines in the bill?

9 **INSERT 20-2:**

10 **SECTION 5.** 196.204 (1) of the statutes is renumbered 196.204 (1g) and amended  
11 to read:

12 196.204 (1g) Except for retained earnings and except as provided in sub. (1r),  
13 a telecommunications utility may not subsidize, directly or indirectly, any activity,  
14 including any activity of an affiliate, which is not subject to this chapter or is subject  
15 to this chapter under s. 196.194, 196.195, 196.202 <sup>5</sup> or 196.203. No  
16 telecommunications utility may allocate any costs or expenses in a manner *which* <sup>that</sup>  
17 would subsidize any activity *which* <sup>that</sup> is not subject to this chapter or is subject to this  
18 chapter under s. 196.194, 196.195, 196.202 <sup>5</sup> or 196.203. Except as provided in subs.

(2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business <sup>that</sup> which is fully regulated under this chapter is subsidized by any activity <sup>that</sup> which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203.

History: 1985 a. 297; 1993 a. 496.

**SECTION 6.** 196.204 (1r) of the statutes is created to read:

196.204 (1r) (a) In this subsection:

1. "Affiliated interest" has the meaning given in s. 196.52 (1).

\*\*\*\*NOTE: Why are you creating a special definition of "affiliated interest"? Why not refer to an affiliate instead? "Affiliate" is already used in s. 196.204 (1) and (7) (a), (b), and (e) without a definition.

2. "Holding company" means a person that, in any chain of successive ownership, directly or indirectly as a beneficial owner, owns, controls, or holds 50% or more of the outstanding voting securities of a telecommunications utility.

3. "Rural carrier petition" means a petition filed with commission under 47 USC 251 (f) (2) for suspension or modification of the requirements of 47 USC 251 (b) or (c).

4. "Rural telephone company exemption" means the exemption from the requirements of 47 USC 251 (c) that applies to a rural telephone company under 47 USC 251 (f) (1).

5. "Small telecommunications utility" means a telecommunications utility that has less than 50,000 access lines in use in this state. For purposes of this subdivision, if a telecommunications utility is owned, controlled, or held by a holding company, the number of access lines in use in this state by the telecommunications utility shall include the number of access lines in use in this state by all other telecommunications utilities, other than commercial mobile radio service providers, that are owned, controlled, or held by the holding company.

\*\*\*\*NOTE: Why are you creating a new definition of "small telecommunications utility"? In other words, why is it necessary to change the definition under current law to include the reference to holding companies? (See the current law definition at s. 196.01 (8), stats.) In any event, I'm assuming that you want to maintain the current law definition of "small telecommunications utility" elsewhere in the statutes, including in s. 196.204 (7) (d) 1. and 2. a. ✓

1 (b) 1. Except as provided in subd. 2.: ✓

2 a. A small telecommunications utility may guarantee a loan for an affiliated  
3 interest if the loan is made before the the first day of the 60th month beginning after  
4 the effective date of this subdivision paragraph ... (revisor inserts date), and the  
5 purpose of the loan is to partially or completely fund the cost of equipment that the  
6 small telecommunications utility or affiliated interest will use to provide  
7 telecommunications services, cable television services, or both.

\*\*\*\*NOTE: Because "telecommunications service" is defined in s. 196.01 (9m), stats.,  
to refer to voice, data, or other information, there's no need to repeat those terms. Also,  
unless you think there is potential confusion, it isn't necessary to refer to high-speed  
transmission. ✓

8 b. A small telecommunications utility may allow an affiliated interest free use  
9 of any of the utility's intangible assets, including its name, goodwill, patents, and  
10 trademarks, if the affiliated interest uses the intangible asset to provide  
11 telecommunications services, cable television services, or both.

\*\*\*\*NOTE: Is it proper to refer to "name" as an intangible asset? The definitions I've  
looked at don't include "name". ✓

\*\*\*\*NOTE: Note that under subd. 1. b., the affiliated interest must provide the  
service, but under subd. 1. a., either the utility or the affiliated interest may provide the  
service. Is that okay? Also, subd. 1. b. only applies to "free use". Is that okay? ✓

12 2. A small telecommunications utility may not guarantee a loan under subd.  
13 1. a. or allow use of an intangible asset under subd. 1. b., unless the small  
14 telecommunications utility waives the right to withhold consent under s. 196.50 (1)  
15 (b) 2. b. in any proceeding under s. 196.50 (1) (b). ✓

16 (c) 1. During the life of a loan guaranteed by a small telecommunications utility  
17 under par. (b) 1. a., if the small telecommunications utility files a rural carrier

1 petition or the commission determines under 47 USC 251 (f) (1) (B) not to terminate  
2 the small telecommunication utility's rural telephone company exemption, the  
3 affiliated interest shall annually pay to the small telecommunications utility an  
4 amount equal to one-quarter of one percent of the outstanding balance of the loan.

5 2. After a small telecommunications utility allows use of an intangible asset  
6 under par. (b) 1. b., if the small telecommunications utility files a rural carrier  
7 petition or the commission determines under 47 USC 251 (f) (1) (B) not to terminate  
8 the small telecommunication utility's rural telephone company exemption, the  
9 affiliated interest shall annually pay the small telecommunications utility an  
10 amount equal to one-quarter of one percent of the affiliated interest's annual gross  
11 sales.

\*\*\*\*NOTE: Is gross sales the proper variable? Although the term is used in the statutes, it isn't defined. One accounting definition I found says that it means the total revenue at invoice value prior to any discounts or allowances. Is that what you mean? Also, is it necessary to limit the sales to sales of telecommunications services? As drafted, the requirement apply to any sale, regardless of whether it's a sale of telecommunications services or not. *ies*

12 3. The duty to make payments under subd. 1. or 2. begins on the date that the  
13 small telecommunications utility files the rural carrier petition or *on the date* that the  
14 commission determines not to terminate the rural telephone company exemption.

\*\*\*\*NOTE: As drafted, it doesn't matter whether or not the PSC grants a rural carrier petition. Therefore, if a small telecommunications utility files a petition, and the PSC declines to grant the petition, the affiliated interest must still make the required payments. Is that okay? Or should the affiliated interest be required to make payments only if the PSC grants a rural carrier petition?

15 SECTION 7. 196.204 (3) of the statutes is renumbered 196.204 (3) (a).

16 SECTION 8. 196.204 (3) (b) of the statutes is created to read:

17 196.204 (3) (b) The commission shall promulgate rules that require the  
18 minimum accounting and reporting requirements under par. (a) that apply to  
19 transactions between small telecommunications utilities, as defined in sub. (1r) (a)

5., and affiliated interests, as defined in s. 196.52 (1), to be consistent with the requirements under 47 CFR 32.27.

\*\*\*\*NOTE: As noted above, why create a special definition for "affiliated interest"?  
Would it be okay to refer to an affiliate, without a definition, instead?

**INSERT 23-10:**

**SECTION 9. Nonstatutory provisions.**

(1) RULES DEFINING "EFFECTIVE COMPETITION"

(a) *Emergency rules.* The public service commission shall use the procedure under section 227.24 of the statutes to promulgate the rules required under sections 196.025 (6) (b) 4., 196.195 (1g), and 196.196 (1) (em) 3. of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency rules shall remain in effect until the date on which the permanent rules take effect. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the public service commission is not required to provide evidence that promulgating an emergency rule under this paragraph is necessary to preserve the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(b) *Proposed permanent rules.* The public service commission shall submit in proposed form the rules required under sections 196.025 (6) (b) 4., 196.195 (1g), and 196.196 (1) (em) 3. of the statutes, as affected by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this paragraph.

\*\*\*\*NOTE: Is the above deadline (approximately 6 months) okay?

(2) PROPOSED ACCOUNTING RULES FOR SMALL TELECOMMUNICATIONS UTILITIES. The public service commission shall submit in proposed form the rules required under sections 196.204 (3) (b) of the statutes, as created by this act, to the legislative council

1 staff under section 227.15 (1) of the statutes no later than the first day of the 4th  
2 month beginning after the effective date of this subsection.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4912/P2dn  
MDK: *hmk*

*Date*

Senator Jauch:

Please review this draft carefully to make sure that it achieves your intent. In particular, please review the NOTES I have included in the text.

I haven't yet determined whether I need to create exceptions to the definition of "rule" for purposes of chapter 227, stats. Also, I am in the process of completing the analysis. However, these *2* tasks should be completed fairly soon, so that, depending on the extent of any other changes you want to make to this version, you can probably have a new version of the draft that may be introduced fairly soon.

*tw*

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4912/P2dn  
MDK:kunkel:jf

February 18, 2002

Senator Jauch:

Please review this draft carefully to make sure that it achieves your intent. In particular, please review the NOTES I have included in the text.

I haven't yet determined whether I need to create exceptions to the definition of "rule" for purposes of chapter 227, stats. Also, I am in the process of completing the analysis. However, these two tasks should be completed fairly soon, so that, depending on the extent of any other changes you want to make to this version, you can probably have a new version of the draft that may be introduced fairly soon.

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1

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to renumber* 196.195 (1) and 196.204 (3); *to renumber and amend*  
2 196.204 (1); *to amend* 100.207 (3) (a), 100.207 (5), 100.207 (6) (b) 1., 100.207  
3 (6) (c), 100.207 (6) (em) 1., 196.01 (8), 196.196 (1) (c) 1., 196.196 (1) (g) 1. (intro.),  
4 196.196 (3) (a) and 196.37 (2); and *to create* 20.155 (1) (Ls), 100.207 (3) (d),  
5 100.207 (3m), 100.207 (6) (g), 100.207 (7), 196.025 (6), 196.195 (1g), 196.196 (1)  
6 (em), 196.196 (6) (title), 196.196 (6) (a), 196.196 (6) (b), 196.196 (6) (c), 196.196  
7 (6) (d), 196.196 (6) (e), 196.196 (6) (f), 196.196 (6) (g), 196.196 (6) (h), 196.1995,  
8 196.204 (1r), 196.204 (3) (b), 196.219 (1) (c), 196.219 (3) (p) and 196.219 (3m) of  
9 the statutes; **relating to:** regulating large price-regulated  
10 telecommunications utilities, wholesale telecommunications service, small  
11 business telecommunications rates, telecommunications sales practices, and  
12 cross subsidization by small telecommunications providers; requiring  
13 mandatory credits for certain telecommunications customers; allowing the  
14 public service commission to order payments by certain telecommunications  
15 providers; requiring the public service commission to report on

INSERT 2-2 ✓

1 telecommunications competition; extending the time limit for emergency rule  
2 procedures; providing an exemption from emergency rule procedures; granting  
3 rule-making authority; and making an appropriation.

### *Analysis by the Legislative Reference Bureau*

This bill makes certain changes to the regulation of telecommunications providers, including "large price-regulated telecommunications utilities." The bill defines a "large price-regulated telecommunications utility" as a telecommunications utility that had more than 500,000 access lines in use in this state at the time that the utility elected to become price regulated. Under current law, "price regulation" is a form of regulation that is based on the prices of services offered by a telecommunications utility, instead of the utility's rate-of-return, which is the traditional basis for regulating public utilities.

The bill does all of the following, which are described below: 1) creates interconnection, collocation, and network elements requirements for large price-regulated telecommunications providers; 2) changes the formula for determining the price increases that a large price-regulated telecommunications utility is allowed to make; 3) requires certain telecommunications utilities to issue mandatory credits to customers; 4) requires telecommunications providers to comply with wholesale service standards; 5) allows the public service commission (PSC) to approve price increases by price-regulated telecommunications utilities for small business rates; 6) allows the PSC to order certain telecommunications providers to make payments to the PSC or other telecommunications providers; 7) regulates certain sales practices by telecommunications providers; 8) creates exceptions on cross subsidization for certain small telecommunications utilities; and 9) requires the PSC to report to the legislature on telecommunications competition.

#### ***Interconnection, collocation, and network elements***

The bill creates various requirements for large price-regulated telecommunications utilities regarding interconnection, collocation, and network elements. The bill defines a "network element" as a facility or equipment used to provide telecommunications service. These requirements relate to the duty of a telecommunications utility under federal law to interconnect its facilities and equipment to other telecommunications providers. "Collocation" refers to the placement of a telecommunications provider's facilities and equipment at the premises of a telecommunications utility for the purpose of interconnection. Collocation may be physical, in which facilities and equipment are actually placed at the utility's premises, or collocation may be virtual, which is the functional equivalent of physical collocation, but without the actual placement of facilities and equipment at the utility's premises.

The bill requires a large price-regulated telecommunications utility to provide interconnection, collocation, and network elements in a manner that promotes the maximum development of competitive telecommunications service offerings in this

state. Also, a large price-regulated telecommunications utility must provide interconnection, collocation, and network elements in a manner specified by a telecommunications provider if that manner is technically feasible. In addition, the rates at, and terms and conditions on, which a large price-regulated telecommunications utility provides physical or virtual collocation of any type of equipment for interconnection with, or access to the network elements of, the utility or any collocated telecommunications provider at the utility's premises, must be just, reasonable, and nondiscriminatory.

The bill also requires a large price-regulated telecommunications utility to provide, upon request, for cross-connects between the facilities or equipment of collocated telecommunications providers that are the most reasonably direct and efficient, as determined by the collocated telecommunications provider. Also upon request, a large price-regulated telecommunications utility must provide for cross-connects between the facilities or equipment of a collocated telecommunications provider and the network elements platform or transport facilities of a noncollocated telecommunications provider. (A "network elements platform" is the sum of the various constituent network elements of the utility.) A large price-regulated telecommunications utility must provide either type of cross-connect in a manner that is consistent with safety and network reliability standards.

Also, a large price-regulated telecommunications utility must, as requested by a telecommunications provider, provide network elements on a bundled or unbundled basis at rates, and on terms and conditions, that are just, reasonable, and nondiscriminatory. Although not defined in the bill, it is understood in the telecommunications industry that "bundled" network elements are those that are not separated from other network elements, and "unbundled" network elements are those that are separated from other network elements. The network elements must be provided at any point that the telecommunications provider determines is technically feasible and provided in a manner that allows the telecommunications provider to combine the network elements to provide new or existing telecommunications service. Unless directed by a telecommunications provider, a large price-regulated telecommunications utility is not allowed to require a wholesale customer to purchase network elements on an unbundled basis if the utility ordinarily combines the elements to provide service to the utility's own end-user customers. The bill defines "end-user customer" as a person who receives local exchange service, but does not resell the service or use the service to provide telecommunications service to another person. Also, as requested by a telecommunications provider, a large price-regulated telecommunications utility must combine any sequence of network elements that the utility ordinarily combines for itself.

In addition, a large price-regulated telecommunications utility may not require that a telecommunications provider purchase other network elements or retail services of the utility if the telecommunications provider uses the network elements platform of the utility that consists solely of combined network elements and the use is for the purpose of providing telecommunications service to an

end-user customer. Other requirements apply to the use of a network elements platform, including the requirement that a large price-regulated telecommunications utility must provide the platform without any disruption of services to end-user customers.

Finally, the bill requires the PSC to issue an order establishing a compliance plan for each large price-regulated telecommunications utility that includes standards for the utility to provide nondiscriminatory access to the utility's services and network elements to the utility's wholesale customers. The plan must also include procedures for measuring the utility's compliance with the standards and requirements for the utility to make specified monetary payments to a wholesale customer if the utility fails to comply with a standard. The PSC must issue the order no later than nine months after the effective date of the bill.

### ***Price increase formula***

Under current law, a price-regulated telecommunications utility may increase its service rates according to a formula that is based on annual changes in the gross domestic product price index (GDPPI). Under the formula, the change in the revenue weighted price indexes for all services that are subject to price regulation may not exceed the difference between the most recent annual change in GDPPI and an offset percentage. In addition, the offset percentage is subject to the following: 1) a penalty adjustment that increases the offset percentage for inadequate service or insufficient investment by a telecommunications utility; and 2) an incentive adjustment that decreases the offset percentage for encouraging infrastructure investment by a telecommunications utility.

The amount of the offset percentage and the penalty and incentive adjustments depend on the size of a telecommunications utility. For a large price-regulated telecommunications utility, the offset percentage is 3%, which is subject to a penalty adjustment that may not exceed 2% and an incentive adjustment that may not exceed 2%. The PSC is required to promulgate rules that establish the penalty and incentive adjustments.

This bill changes the penalty adjustment to the offset percentage for large price-regulated telecommunications utilities. Under the bill, the penalty adjustment may not exceed 10%.

### ***Mandatory credits***

The bill requires a large price-regulated telecommunications utility to issue credits to end-user customers if the utility fails to satisfy requirements regarding each of the following: 1) disruption of service; 2) failure to install local exchange service; and 3) failure to keep service or repair appointments. The amount of a credit depends on the type of requirement and whether a residential or business telephone line is affected. The bill also allows the PSC, upon complaint or its own motion, to issue an order requiring telecommunications utilities, in addition to large price-regulated telecommunications utilities, to issue credits for failing to satisfy the above requirements. The PSC may issue such an order if it is necessary to protect the public interest.

The above requirements regarding the credits do not apply after the first day of the 60th month after the bill's effective date, unless the PSC, after notice and

INSERT 4A ✓

INSERT 5A ✓

hearing, issues an order providing the requirements apply after that date. The PSC may issue such an order if it is necessary to protect the public interest.

**Wholesale service standards**

An analysis of these changes will be provided in a subsequent version of this draft.

**Small business rates**

An analysis of these changes will be provided in a subsequent version of this draft.

INSERT 5B

**PSC authority regarding payments by telecommunications providers**

An analysis of these changes will be provided in a subsequent version of this draft.

**Sales practices of telecommunications providers**

Current state law prohibits persons who provide telecommunications services from engaging in certain sales practices such as charging a customer for telecommunications services provided after the customer has cancelled those services. The law also prohibits a person who provides telecommunications services from engaging in advertising practices concerning those services that are false, misleading, or deceptive. In addition, the law requires that if a person orders telecommunications services as the result of an oral solicitation, the provider of the telecommunications services must provide independent confirmation of the order.

This bill provides that a person may request a telecommunications service orally, in writing, or by electronic means but specifies that a telecommunications provider may not provide services to a person who orders the service by any electronic means that simultaneously activates the service.

The bill also imposes additional requirements on persons who provide telecommunications services. The bill prohibits a person from enrolling a customer in any telecommunications service in which the customer did not affirmatively request to be enrolled. The bill specifies that a request to be enrolled in a particular telecommunications service is an affirmative request to be enrolled only in that particular service. The bill also prohibits the practice known as "slamming." A person engages in slamming by making a change in a customer's selection of a provider of telecommunications services even though the customer did not affirmatively request that such a change be made.

In addition to the slamming prohibitions created under this bill, federal law also prohibits slamming. This prohibition against slamming under federal law is regulated by the federal communications commission (FCC). Under rules promulgated by the FCC, any state may notify the FCC that it intends to administer the FCC rules prohibiting slamming including the remedies and penalties specified under those rules. This bill directs the department of agriculture, trade and consumer protection (DATCP) to notify the FCC of its intention to administer the FCC rules. It also requires DATCP to promulgate rules that are consistent with the FCC regulations rules.

INSERT 6A ✓

**Cross subsidization**

↖ An analysis of these changes will be provided in a subsequent version of this draft.

**PSC report on telecommunications competition**

↖ An analysis of these changes will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 20.155 (1) (Ls) of the statutes is created to read:

2       20.155 (1) (Ls) *Telecommunications provider payments.* All moneys received  
3 from payments by telecommunications providers under ss. 196.219 (3m) (c) and  
4 196.37 (2) for purposes determined by the commission under ss. 196.219 (3m) (c) and  
5 196.37 (2).

6       **SECTION 2.** 100.207 (3) (a) of the statutes is amended to read:

7       100.207 (3) (a) A person may not engage in negative option billing or negative  
8 enrollment of telecommunications services, including unbundled  
9 telecommunications services. A person may not bill a customer for, or enroll a  
10 customer in, any telecommunications service that the customer did not affirmatively  
11 order unless that service is required to be provided by law, the federal  
12 communications commission, or the public service commission. A customer's failure  
13 to refuse a person's proposal to provide a telecommunications service is not an  
14 affirmative request for that telecommunications service. A customer's request to be  
15 enrolled in a particular telecommunications service is an affirmative request to be  
16 enrolled only in that particular telecommunications service.

17       **SECTION 3.** 100.207 (3) (d) of the statutes is created to read:

1           100.207 (3) (d) A person may not make a change in a customer's selection of a  
2 telecommunications service provider unless the customer affirmatively requests  
3 that the person take such action.

4           **SECTION 4.** 100.207 (3m) of the statutes is created to read:

5           100.207 (3m) REQUESTS FOR SERVICE. (a) A customer may affirmatively request  
6 a telecommunications service orally, in writing, or by electronic means.

7           (b) Notwithstanding par. (a), a person may not provide a telecommunications  
8 service to a customer who orders the service by an electronic means that  
9 simultaneously activates that service.

10          **SECTION 5.** 100.207 (5) of the statutes is amended to read:

11          100.207 (5) TERRITORIAL APPLICATION. ~~Subsections (2) to (4) apply~~ This  
12 subsection applies to any practice directed to any person in this state.

13          **SECTION 6.** 100.207 (6) (b) 1. of the statutes is amended to read:

14          100.207 (6) (b) 1. The department of justice, after consulting with the  
15 department of agriculture, trade and consumer protection, or any district attorney  
16 upon informing the department of agriculture, trade and consumer protection, may  
17 commence an action in circuit court in the name of the state to restrain by temporary  
18 or permanent injunction any violation of this section. Injunctive relief may include  
19 an order directing telecommunications providers, as defined in s. 196.01 (8p), to  
20 discontinue telecommunications service provided to a person violating this section  
21 or ch. 196. Temporary injunctive relief may include an order requiring that a person  
22 who provides telecommunications services deposit in an escrow account any  
23 payments that the provider has received or is expected to receive from customers as  
24 a result of practices that may violate this section or ch. 196. Before entry of final  
25 judgment, the court may make such orders or judgments as may be necessary to



1 restore to any person any pecuniary loss suffered because of the acts or practices  
2 involved in the action if proof of these acts or practices is submitted to the satisfaction  
3 of the court.

4 **SECTION 7.** 100.207 (6) (c) of the statutes is amended to read:

5 100.207 (6) (c) Any person who violates ~~subs. (2) to (4)~~ this section shall be  
6 required to forfeit not less than \$25 nor more than \$5,000 \$10,000 for each offense.  
7 Each day of violation constitutes a separate offense. Forfeitures under this  
8 paragraph shall be enforced by the department of justice, after consulting with the  
9 department of agriculture, trade and consumer protection, or, upon informing the  
10 department, by the district attorney of the county where the violation occurs.

11 **SECTION 8.** 100.207 (6) (em) 1. of the statutes is amended to read:

12 100.207 (6) (em) 1. Before preparing any proposed rule under ~~this section~~ par.  
13 (e), the department shall form an advisory group to suggest recommendations  
14 regarding the content and scope of the proposed rule. The advisory group shall  
15 consist of one or more persons who may be affected by the proposed rule, a  
16 representative from the department of justice, and a representative from the public  
17 service commission.

18 **SECTION 9.** 100.207 (6) (g) of the statutes is created to read:

19 100.207 (6) (g) Nothing in this subsection precludes the department from  
20 seeking a remedy or penalty in accordance with the rules promulgated under sub.  
21 (7). Practices in violation of sub. (3) may also constitute a violation of the rules  
22 promulgated under sub. (7).

23 **SECTION 10.** 100.207 (7) of the statutes is created to read:

24 100.207 (7) ADMINISTRATION OF FEDERAL COMMUNICATIONS COMMISSION RULES.  
25 The department shall administer and enforce the federal communications

commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110 to 64.1190 and shall notify the federal communications commission, in accordance with 47 CFR 64.1110 (a), of its intention to administer and enforce those rules and remedies. In addition to the rules promulgated under sub. (6) (e), the department shall promulgate rules that are consistent with the commission's unauthorized carrier change rules and remedies under 47 CFR 64.1110 to 64.1190.

SECTION 11. 196.01 (8) of the statutes is amended to read:

196.01 (8) "Small telecommunications utility" means, except as provided in s. 196.204 (1r) (a) 5. and (3) (b), any telecommunications utility or a successor in interest of a telecommunications utility that provided landline local and access telecommunications service as of January 1, 1984, and that has less than 50,000 access lines in use in this state.

SECTION 12. 196.025 (6) of the statutes is created to read:

196.025 (6) (a) In this subsection, "intrastate telecommunications service provider" means any telecommunications provider that provides intrastate telecommunications service. *or Internet access service*

\*\*\*\*NOTE: I understand that your intent is to include providers of Internet access service and that "telecommunications service," as defined in s. 196.01 (9m), includes such service. However, if there is any doubt, you might want to explicitly refer to providers of Internet access service.

\*\*\*\*NOTE: The above refers to intrastate, rather than local, telecommunications service. Is that okay? Also, the definition applies to any such provider, so it isn't necessary to identify the different types of providers.

(b) The commission shall investigate competition among intrastate telecommunications service providers during the 5-year period after the effective date of this paragraph .... [revisor inserts date], and submit a report to the appropriate standing committees of the legislature under s. 13.172 (3) that assesses

1 the relationship between the regulatory and competitive status of all intrastate  
2 telecommunications providers, including an assessment of all of the following:

3 1. The status of competition among intrastate telecommunications service  
4 providers, including all of the following:

\*\*\*\*NOTE: Subd. 1. incorporates your 2nd bullet point.

5 a. The number of different intrastate telecommunications providers in  
6 different product and geographic markets in this state as compared to national data.

\*\*\*\*NOTE: Subd. 1. a. incorporates your 4th bullet point.

\*\*\*\*NOTE: What is a product market? How is it different than a geographic market?

7 b. The prices of all telecommunications services offered by the different  
8 intrastate telecommunications service providers in this state as compared to  
9 national averages.

\*\*\*\*NOTE: Subd. 1. b. incorporates your 6th bullet point. I don't think it's necessary  
to refer to prices within each market, because the above broadly refers to all prices.

10 c. The market power of the different intrastate telecommunications providers  
11 in this state as compared to national data.

\*\*\*\*NOTE: Subd. 1. c. incorporates your 5th bullet point.

\*\*\*\*NOTE: What is "market power"? Will the PSC know how to assess this?

12 2. The differences in the level of regulation applicable to the different intrastate  
13 telecommunications service providers in this state.

\*\*\*\*NOTE: Subd. 2. incorporates your 3rd bullet point.

14 3. A comparison of the retail service quality credit plans offered by the different  
15 intrastate telecommunications service providers in this state and a comparison  
16 between such plans that are offered in this state and elsewhere in the nation.

\*\*\*\*NOTE: Subd. 3. incorporates your 7th bullet point.

\*\*\*\*NOTE: Will the PSC know what a "retail service quality credit plan" is?

17 4. The barriers to effective competition, as defined in rules promulgated by the  
18 commission, in markets for telecommunications services offered by intrastate

telecommunications providers, including the barriers to entry into different product and geographic markets, and including of whether the barriers are unreasonable and whether any barrier results from anticompetitive behavior of any intrastate telecommunications provider.

\*\*\*\*NOTE: Subd. 4. combines your 1st and 10th bullet points. Note that the proposed legislation under your 1st bullet point is included in par. (c).

\*\*\*\*NOTE: Is it really necessary to distinguish between barriers to effective competition and barriers to entry?

\*\*\*\*NOTE: See the NOTE to subd. 1. a. regarding product versus geographic markets.

\*\*\*\*NOTE: Regarding the rules for the definition of "effective competition," see the NOTE following the creation of s. 196.195 (1g).

5. The total number of different types of complaints by residential customers to the commission or the department of agriculture, trade and consumer protection regarding each intrastate telecommunications provider.

\*\*\*\*NOTE: Subd. 5. incorporates your 8th bullet point. See also subd. 6.

\*\*\*\*NOTE: Instead of limiting the assessment to specified complaints (service, slamming, and cramming), why not require the PSO to assess the different types, as I have done in subd. 5.? Also, I required the report to include the complaints made to DATCP. Is that okay?

6. For each intrastate telecommunications provider, of the total number of different types of complaints under subd. 1., the number of different types of complaints that are due to circumstances that are the fault of the intrastate telecommunications provider.

7. The availability, price, and quality of unbundled network elements, interconnection, and collocation provided by the different intrastate telecommunications providers.

\*\*\*\*NOTE: Subd. 7. incorporates your 9th bullet point. See also subd. 8.

\*\*\*\*NOTE: The compliance plan under subd. 8. applies only to large price-regulated telecommunications utilities. However, I made subd. 7. apply to any intrastate telecommunications provider. Is that okay?

8. The effectiveness of the compliance plans established in the order under s. 196.1995 (5) (a).

1           9. Any other factor that the commission determines is relevant to competition  
2 among intrastate telecommunications providers.

\*\*\*NOTE: Subd. 9. makes it explicit that the specified factors are not exclusive.

3           (c) The report under par. (b) shall include any proposals for legislation  
4 recommended by the commission, including any proposals for remedying  
5 anti-competitive behavior of intrastate telecommunications providers. If the  
6 proposals do not include recommendations for requiring intrastate  
7 telecommunications providers to structurally separate wholesale and retail  
8 operations into separate, independently operated affiliates, the report shall indicate  
9 the commission's reasons for not making such a recommendation.

\*\*\*NOTE: Should the recommendation on structural separation only apply to large price-regulated telecommunications utilities? As drafted, it applies to any intrastate telecommunications provider.

10       **SECTION 13.** 196.195 (1) of the statutes is renumbered 196.195 (1r).

11       **SECTION 14.** 196.195 (1g) of the statutes is created to read:

12       **196.195 (1g) DEFINITION.** In this section, "effective competition" has the  
13 meaning given in rules promulgated by the commission.

\*\*\*NOTE: I decided the best approach to the definition of "effective competition" is to require the PSC to promulgate a definition only with respect to those statutes that are relevant to your purposes. Therefore, you will not affect the meaning of "effective competition" regarding electricity markets in ss. 196.025 (5) (ar) (intro.), 196.485 (1) (g), and 196.491 (2) (a) 12, stats. Also, note the nonstatutory provisions of the bill that impose a deadline for the PSC's submission of proposed rules and that require the PSC to use emergency rule-making procedures before the permanent rules go into effect.

14       **SECTION 15.** 196.196 (1) (c) 1. of the statutes is amended to read:

15       **196.196 (1) (c) 1.** A price-regulated telecommunications utility may not  
16 increase its rates for services under par. (a), except for basic message  
17 telecommunications service, for a period of 3 years after electing to become price  
18 regulated. Following the initial 3-year period for services under par. (a), except for  
19 basic message telecommunications service, and at any time for basic message

1 telecommunications service, a price-regulated telecommunications utility may  
2 increase its rates for those services to the extent that the change in the revenue  
3 weighted price indices does not exceed 2 percentage points less than the most recent  
4 annual change in the gross domestic product price index, as published by the federal  
5 government. The commission shall, by rule, create a penalty mechanism for up to  
6 a one percentage point increase in the percentage offset for inadequate service  
7 provided by or insufficient investment made by a price-regulated  
8 telecommunications utility. The commission shall, by rule, create an incentive  
9 mechanism for up to a one percentage point decrease in the percentage offset to  
10 encourage infrastructure investment by the price-regulated telecommunications  
11 utility. For a telecommunications utility with more than 500,000 access lines in use  
12 in this state at the time of electing to become price regulated, the percentage offset  
13 to the change in the gross domestic product price index shall be 3 percentage points  
14 and, the penalty mechanism shall be up to a 10 percentage point increase, and the  
15 incentive mechanism shall be up to a 2 percentage points point decrease. No earlier  
16 than 6 years after September 1, 1994, and no more frequently than every 3 years  
17 thereafter, the commission may, following notice and an opportunity for hearing, by  
18 rule increase or decrease the gross domestic product price index percentage offset by  
19 a maximum of one percentage point in any 12-month period to reflect any statewide  
20 changes in the productivity experience of the telecommunications industry. The  
21 commission shall promulgate rules to identify the factors that the commission may  
22 consider in determining changes in the productivity experience of the  
23 telecommunications industry. If application of the price regulation index formula  
24 achieves a negative result, prices shall be reduced so that the cumulative price

1 change for services under par. (a), including prior price reductions in these services,  
2 achieves the negative result.

3 **SECTION 16.** 196.196 (1) (em) of the statutes is created to read:

4 196.196 (1) (em) 1. In this paragraph, "small business rates" means rates for  
5 standard business access lines and usage by small businesses with no more than 3  
6 access lines. ✓ INSERT 14-9

7 2. Notwithstanding pars. (c), (d), and (e), the commission shall investigate  
8 whether to allow price-regulated telecommunications utilities to increase small  
9 business rates in geographic areas specified by the commission. The commission  
10 may allow such an increase in a geographic area only if <sup>as a result of the investigation</sup> the commission determines  
11 that effective competition, as defined in rules promulgated by the commission, exists  
12 in the geographic area. If the commission makes such a determination, a  
13 price-regulated telecommunications utility may petition the commission to increase  
14 small business rates in the geographic area. <sup>IF</sup> A price-regulated telecommunications  
15 utility ~~shall~~ <sup>5</sup> include with a petition a statement that, if the petition is granted, the  
16 utility agrees to allow customers with whom the utility has contracts for small  
17 business rates to terminate the contracts as provided in subd. 3. The commission  
18 may not grant a petition ~~filed~~ <sup>under this subdivision</sup> until after the commission's  
19 order under s. 196.219 (3m) (b) goes into effect.

\*\*\*NOTE: Regarding the rules for the definition of "effective competition," see the  
NOTE following the creation of s. 196.195 (1g).

20 3. Notwithstanding any provision in a tariff filed under s. 196.194 (1), if the  
21 commission grants a petition filed by a price-regulated telecommunications utility  
22 under subd. 2., a customer of the utility may, no later than one year after the effective  
23 date of the commission's order granting the petition, terminate, without penalty, a

NO  
# 1 the commission shall grant  
the petition, except that

1 contract with the utility for small business rates before the expiration of the contract  
2 if the customer terminates the contract for the purpose of entering into a new  
3 contract for small business rates with another telecommunications provider.  
4 Termination of a contract under this subdivision is effective when the  
5 price-regulated telecommunications utility receives oral or written notice from a  
6 customer.

7 4. If the commission grants a petition filed by a price-regulated  
8 telecommunications utility under subd. 2., the utility shall give notice to its  
9 customers that are subject to small business rates that describes the small business  
10 rate increase approved by the commission and the right of customers to terminate  
11 contracts under subd. 3. The notice shall be published in a newspaper of general  
12 circulation in the affected geographic area within a reasonable time period after the  
13 commission grants the petition, and shall be included in or on the bill of each  
14 customer that is subject to small business rates in the billing first following the  
15 commission's granting of the petition.

16 **SECTION 17.** 196.196 (1) (g) 1. (intro.) of the statutes is amended to read:

17 196.196 (1) (g) 1. (intro.) Five years after a telecommunications utility elects  
18 to become a price-regulated telecommunications utility or, if subd. 4. applies, within  
19 the dates specified in that subdivision, the commission shall hold a hearing, and at  
20 any time thereafter, upon complaint or on the commission's own motion, the  
21 commission may hold a hearing, to determine whether it is in the public interest to  
22 suspend one or more of the provisions of this subsection, except par. (em), as it applies  
23 to a price-regulated telecommunications utility or to approve an alternative  
24 regulatory method for that utility. In making a determination under this  
25 subdivision, the commission shall identify all of the following:



1       **SECTION 18.** 196.196 (3) (a) of the statutes is amended to read:

2       196.196 (3) (a) Except to the extent expressly permitted by this section and ss.  
3       196.19 (1m), 196.194, 196.195, 196.1995, 196.20 (1m), 196.204, 196.209, and  
4       196.219, the commission may not have jurisdiction over the prices or terms and  
5       conditions for the offering of any other services, including new telecommunications  
6       services, offered by a price-regulated telecommunications utility.

7       **SECTION 19.** 196.196 (6) (title) of the statutes is created to read:

8       196.196 (6) (title) MANDATORY CREDITS.

9       **SECTION 20.** 196.196 (6) (a) of the statutes is created to read:

10      196.196 (6) (a) *Definitions.* In this subsection:

11      1. “Customer” means any person, including a telecommunications provider,  
12      that uses the services, products, or facilities provided by a telecommunications  
13      utility.

14      2. “End-user customer” means a person that receives local exchange service  
15      from a telecommunications utility or another telecommunications provider, and that  
16      does not resell the local exchange service or use such service to provide  
17      telecommunications service to any other customer.

18      3. “Large price-regulated telecommunications utility” means a  
19      price-regulated telecommunications utility that has more than 500,000 access lines  
20      in use in this state at the time of electing to become price regulated.

21      4. “Local exchange service” has the meaning given in s. 196.50 (1) (b) 1.

22      5. “Telecommunications utility” means a large price-regulated  
23      telecommunications utility or a telecommunications utility specified by the  
24      commission in an order under par. (f).

25      **SECTION 21.** 196.196 (6) (b) of the statutes is created to read:

1           196.196 (6) (b) *Service disruptions.* 1. If the local exchange service of an  
2           end-user customer is disrupted by a telecommunications utility and remains  
3           disrupted for more than 24 hours after the disruption is reported to the  
4           telecommunications utility, the utility shall issue a credit in an amount specified in  
5           subd. 2. to the end-user customer unless one of the following applies:

6           a. The disruption is caused by the end-user customer or the end-user  
7           customer's telecommunications equipment.

8           b. The disruption is caused by a natural disaster, act of God, military action,  
9           war, insurrection, or riot.

10          c. The end-user customer fails to keep an appointment to repair the disruption  
11          and the utility is not able to obtain access to repair the disruption.

12          2. If service is disrupted for 24 hours or more, the amount of the credit under  
13          subd. 1. shall be \$35 for each primary residential line, \$5 for each other residential  
14          line, \$135 for each main billing business line, and \$25 for each other business line,  
15          for each 24-hour period, or portion of a 24-hour period, in which service is disrupted.

16          **SECTION 22.** 196.196 (6) (c) of the statutes is created to read:

17          196.196 (6) (c) *Failure to install local exchange service.* 1. Except as provided  
18          in subd. 2., if a telecommunications utility fails to install local exchange service or  
19          related equipment within 5 business days after an end-user customer places an  
20          order for the service or equipment, the telecommunications utility shall issue a credit  
21          to the end-user customer in an amount equal to \$35 for each residential line and  
22          \$135 for each business line for each business day, or portion of a business day, beyond  
23          the 5th business day that the service or equipment is not installed.

24          2. Subdivision 1. does not apply to any of the following:

1           a. The installation of service in an undeveloped area where there are no  
2 telecommunications facilities.

3           b. A failure to install that is caused by a natural disaster, act of God, military  
4 action, war, insurrection, or riot.

5           c. A failure to install resulting from the end-user customer voluntarily  
6 changing the installation date without providing notice 48 hours before the  
7 originally scheduled installation date.

8           **SECTION 23.** 196.196 (6) (d) of the statutes is created to read:

9           196.196 (6) (d) *Failure to keep appointments.* 1. A telecommunications utility  
10 shall do all of the following:

11           a. Except as provided in subd. 2., if the utility fails to keep an appointment to  
12 install service or make on-premises or outside repairs for an end-user customer,  
13 issue a \$35 credit for each residential line and a \$135 credit for each business line  
14 that is affected by the failure.

15           b. Inform an end-user customer about the utility's obligation to issue a credit  
16 under subd. 1. a. at the time an appointment is made.

17           2. Subdivision 1. a. does not apply if the telecommunications utility provides  
18 the end-user customer with 24-hour advance notice that the utility is not able to  
19 keep the appointment or if a natural disaster, act of God, military action, war,  
20 insurrection, or riot prevents the utility from keeping the appointment.

21           **SECTION 24.** 196.196 (6) (e) of the statutes is created to read:

22           196.196 (6) (e) *Credit procedure.* 1. If a telecommunications utility is required  
23 to provide a credit to an end-user customer under this subsection, the  
24 telecommunications utility shall issue the credit by adjusting the end-user  
25 customer's first bill following the event for which the credit is required.

2. Except for an end-user customer report under par. (b) 1., a telecommunications utility may not require an end-user customer to provide any notice as a condition for issuing a credit required under this subsection.

**SECTION 25.** 196.196 (6) (f) of the statutes is created to read:

196.196 (6) (f) *Applicability.* If necessary to protect the public interest, the commission may, upon complaint or its own motion, issue an order specifying telecommunications utilities in addition to large price-regulated telecommunications utilities that are subject to the requirements of this subsection.

**SECTION 26.** 196.196 (6) (g) of the statutes is created to read:

196.196 (6) (g) *Other remedies available.* The remedies under this subsection are not exclusive.

**SECTION 27.** 196.196 (6) (h) of the statutes is created to read:

196.196 (6) (h) *Sunset.* 1. Except as provided in subd. 2., this subsection does not apply after the first day of the 60th month beginning after the effective date of this <sup>subdivision</sup> ~~paragraph~~ .... [revisor inserts date].

2. If necessary to protect the public interest, the commission may, after notice and hearing, issue an order providing that this subsection applies after the date specified in subd. 1. ✓

**SECTION 28.** 196.1995 of the statutes is created to read:

**196.1995 Interconnection, collocation, and network elements. (1)**

**DEFINITIONS.** In this section:

(a) "End-user customer" has the meaning given in s. 196.196 (6) (a) 2.

(b) "Large price-regulated telecommunications utility" means a price-regulated telecommunications utility that has more than 500,000 access lines in use in this state at the time of electing to become price regulated.

1 (c) "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

2 (d) "Network element" means a facility or equipment used to provide  
3 telecommunications service. "Network element" includes features, functions, and  
4 capabilities that are provided by means of such a facility or equipment, including  
5 subscriber numbers, databases, signaling systems, and information sufficient for  
6 bills or collections or that are used in transmitting, routing, or otherwise providing  
7 telecommunications service.

8 (e) "Wholesale customer" means a telecommunications provider that uses the  
9 services, products, or facilities of a large price-regulated telecommunications utility  
10 to provide telecommunications service to an end-user customer.

11 (2) GENERALLY. (a) A large price-regulated telecommunications utility shall  
12 provide interconnection, collocation, and network elements to telecommunications  
13 providers in a manner that promotes the maximum development of competitive  
14 telecommunications service offerings in this state.

15 (b) A large price-regulated telecommunications utility shall provide  
16 interconnection, collocation, and network elements in a manner specified by a  
17 telecommunications provider if that manner is technically feasible. A manner is  
18 presumed to be technically feasible if the large price-regulated telecommunications  
19 utility or any of its affiliates offer or provide interconnection, collocation, and  
20 network elements in that manner in any jurisdiction.

21 (3) COLLOCATION. (a) A large price-regulated telecommunications utility shall  
22 provide physical or virtual collocation of any type of equipment for interconnection  
23 with, or access to the network elements of, the utility or any collocated  
24 telecommunications provider at the utility's premises, at rates and on terms and  
25 conditions that are just, reasonable, and nondiscriminatory. In this paragraph,

1 “equipment” includes optical transmission equipment, multiplexers, remote  
2 switching modules, and cross-connects between the facilities or equipment of other  
3 collocated telecommunications providers. In this paragraph, “equipment” also  
4 includes microwave transmission facilities on the exterior or interior of any premises  
5 owned or controlled by a large price-regulated telecommunications utility, unless  
6 the large price-regulated telecommunications utility demonstrates to the  
7 satisfaction of the commission that physical or virtual collocation of such facilities  
8 is not feasible due to technical issues or space limitations.

9 (b) Upon request, a large price-regulated telecommunications utility shall  
10 provide for each of the following in a manner that is consistent with safety and  
11 network reliability standards:

12 1. Cross-connects between the facilities or equipment of collocated  
13 telecommunications providers that are the most reasonably direct and efficient, as  
14 determined by the collocated telecommunications provider.

15 2. Cross-connects between the facilities or equipment of a collocated  
16 telecommunications provider and the network elements platform or transport  
17 facilities of a noncollocated telecommunications provider.

18 (4) NETWORK ELEMENTS. (a) Upon the request of a telecommunications provider,  
19 a large price-regulated telecommunications utility shall provide network elements  
20 on a bundled or unbundled basis, as requested by the telecommunications provider,  
21 at any point that the telecommunications provider determines is technically feasible,  
22 and in a manner that allows the telecommunications provider to combine the  
23 network elements to provide new or existing telecommunications service. A large  
24 price-regulated telecommunications utility must provide network elements under

1 this paragraph at rates, and on terms and conditions, that are just, reasonable, and  
2 nondiscriminatory.

3 (b) A large price-regulated telecommunications utility may not require a  
4 wholesale customer to purchase network elements on an unbundled basis if the  
5 utility ordinarily combines the elements to provide service to the utility's own  
6 end-user customers, except at the direction of a telecommunications provider that  
7 requests unbundled network elements.

8 (c) At the direction of a telecommunications provider that requests network  
9 elements, a large price-regulated telecommunications utility shall provide network  
10 elements on a bundled or unbundled basis, and shall combine any sequence of  
11 network elements requested by the telecommunications provider that the utility  
12 ordinarily combines for itself.

13 (d) If a telecommunications provider uses the network elements platform of a  
14 large price-regulated telecommunications utility that consists solely of combined  
15 network elements and the use is for the purpose of providing telecommunications  
16 service to an end-user customer, the large price-regulated telecommunications  
17 utility may not require that the telecommunications provider purchase other  
18 network elements or retail services of the utility. A telecommunications provider  
19 may order the network elements platform on an as-is basis for an end-user customer  
20 that has received local exchange service from the large price-regulated  
21 telecommunications utility and the telecommunications provider may direct the  
22 utility not to change any of the features previously selected by the end-user  
23 customer. A large price-regulated telecommunications utility that provides a  
24 network elements platform to a telecommunications provider shall provide the  
25 platform without any disruption of services to end-user customers.

1           (5) COMPLIANCE PLAN. (a) No later than the first day of the 9th month beginning  
2       after the effective date of this paragraph .... [revisor inserts date], the commission  
3       shall, after notice and, if requested, a hearing, issue an order establishing a  
4       compliance plan for each large price-regulated telecommunications utility that  
5       includes each of the following:

\*\*\*\*NOTE: Is the above deadline consistent with your other deadlines in the bill?

6           1. Standards for the utility to provide nondiscriminatory access to the utility's  
7       services and network elements, including the utility's operational support system,  
8       to the utility's wholesale customers. The access must be at least equal in quality to  
9       the access provided by the utility to itself or to any subsidiary, affiliate, or other  
10      person to which the utility provides interconnection.

11          2. Procedures for measuring the large price-regulated telecommunications  
12      utility's compliance with the standards under subd. 1.

13          3. Requirements for the utility to make specified monetary payments to a  
14      wholesale customer if the utility fails to comply with the standards under subd. 1.

15          (b) The requirements of this subsection apply in addition to any requirements  
16      under an interconnection agreement.

17          **SECTION 29.** 196.204 (1) of the statutes is renumbered 196.204 (1g) and  
18      amended to read:

19          196.204 (1g) Except for retained earnings and except as provided in sub. (1r),  
20      a telecommunications utility may not subsidize, directly or indirectly, any activity,  
21      including any activity of an affiliate, which is not subject to this chapter or is subject  
22      to this chapter under s. 196.194, 196.195, 196.202, or 196.203. No  
23      telecommunications utility may allocate any costs or expenses in a manner which  
24      that would subsidize any activity ~~which~~ that is not subject to this chapter or is subject



1 to this chapter under s. 196.194, 196.195, 196.202, or 196.203. Except as provided  
2 in subs. (2) and (4) the commission may not allocate any revenue or expense so that  
3 a portion of a telecommunications utility's business ~~which~~ that is fully regulated  
4 under this chapter is subsidized by any activity ~~which~~ that is not regulated under  
5 this chapter or is partially deregulated under s. 196.194, 196.195, 196.202, or  
6 196.203.

7 **SECTION 30.** 196.204 (1r) of the statutes is created to read:

8 196.204 (1r) (a) In this subsection:

9 1. "Affiliated interest" has the meaning given in s. 196.52 (1).

\*\*\*\*NOTE: Why are you creating a special definition of "affiliated interest"? Why  
not refer to an affiliate instead? "Affiliate" is already used in s. 196.204 (1) and (7) (a),  
(b), and (e) without a definition.

10 2. "Holding company" means a person that, in any chain of successive  
11 ownership, directly or indirectly as a beneficial owner, owns, controls, or holds 50%  
12 or more of the outstanding voting securities of a telecommunications utility.

13 3. "Rural carrier petition" means a petition filed with commission under 47  
14 USC 251 (f) (2) for suspension or modification of the requirements of 47 USC 251 (b)  
15 or (c).

16 4. "Rural telephone company exemption" means the exemption from the  
17 requirements of 47 USC 251 (c) that applies to a rural telephone company under 47  
18 USC 251 (f) (1).

19 5. "Small telecommunications utility" means a telecommunications utility that  
20 has less than 50,000 access lines in use in this state. For purposes of this subdivision,  
21 if a telecommunications utility is owned, controlled, or held by a holding company,  
22 the number of access lines in use in this state by the telecommunications utility  
23 shall include the number of access lines in use in this state by all other

telecommunications utilities, other than commercial mobile radio service providers, that are owned, controlled, or held by the holding company.

\*\*\*\*NOTE: Why are you creating a new definition of "small telecommunications utility"? In other words, why is it necessary to change the definition under current law to include the reference to holding companies? (See the current law definition at s. 196.01 (8), stats.) In any event, I'm assuming that you want to maintain the current law definition of "small telecommunications utility" elsewhere in the statutes, including in s. 196.204 (7) (d) 1. and 2. a.

(b) 1. Except as provided in subd. 2.:

a. A small telecommunications utility may guarantee a loan for an affiliated interest if the loan is made before the the first day of the 60th month beginning after the effective date of this subdivision <sup>1. a.</sup> ~~paragraph~~ .... [revisor inserts date], and the purpose of the loan is to partially or completely fund the cost of equipment that the small telecommunications utility or affiliated interest will use to provide telecommunications services, cable television services, or both.

\*\*\*\*NOTE: Because "telecommunications service" is defined in s. 196.01 (9m), stats., to refer to voice, data, or other information, there's no need to repeat those terms. Also, unless you think there is potential confusion, it isn't necessary to refer to high-speed transmission.

b. A small telecommunications utility may allow an affiliated interest free use of any of the utility's intangible assets, including its name, goodwill, patents, and trademarks, if the affiliated interest uses the intangible asset to provide telecommunications services, cable television services, or both.

\*\*\*\*NOTE: Is it proper to refer to "name" as an intangible asset? The definitions I've looked at don't include "name."

\*\*\*\*NOTE: Note that under subd. 1. b., the affiliated interest must provide the service, but under subd. 1. a., either the utility or the affiliated interest may provide the service. Is that okay? Also, subd. 1. b. only applies to "free use." Is that okay?

2. A small telecommunications utility may not guarantee a loan under subd. 1. a. or allow use of an intangible asset under subd. 1. b., unless the small telecommunications utility waives the right to withhold consent under s. 196.50 (1) (b) 2. b. in any proceeding under s. 196.50 (1) (b).

1 (c) 1. During the life of a loan guaranteed by a small telecommunications utility  
2 under par. (b) 1. a., if the small telecommunications utility files a rural carrier  
3 petition or the commission determines under 47 USC 251 (f) (1) (B) not to terminate  
4 the small telecommunication utility's rural telephone company exemption, the  
5 affiliated interest shall annually pay to the small telecommunications utility an  
6 amount equal to one-quarter of one percent of the outstanding balance of the loan.

7 2. After a small telecommunications utility allows use of an intangible asset  
8 under par. (b) 1. b., if the small telecommunications utility files a rural carrier  
9 petition or the commission determines under 47 USC 251 (f) (1) (B) not to terminate  
10 the small telecommunication utility's rural telephone company exemption, the  
11 affiliated interest shall annually pay the small telecommunications utility an  
12 amount equal to one-quarter of one percent of the affiliated interest's annual gross  
13 sales.

\*\*\*\*NOTE: Is gross sales the proper variable? Although the term is used in the statutes, it isn't defined. One accounting definition I found says that it means the total revenue at invoice value prior to any discounts or allowances. Is that what you mean? Also, is it necessary to limit the sales to sales of telecommunications services? As drafted, the requirement applies to any sale, regardless of whether it's a sale of telecommunications services or not.

14 3. The duty to make payments under subd. 1. or 2. begins on the date that the  
15 small telecommunications utility files the rural carrier petition or on the date that  
16 the commission determines not to terminate the rural telephone company  
17 exemption.

\*\*\*\*NOTE: As drafted, it doesn't matter whether or not the PSC grants a rural carrier petition. Therefore, if a small telecommunications utility files a petition, and the PSC declines to grant the petition, the affiliated interest must still make the required payments. Is that okay? Or should the affiliated interest be required to make payments only if the PSC grants a rural carrier petition?

18 SECTION 31. 196.204 (3) of the statutes is renumbered 196.204 (3) (a).

19 SECTION 32. 196.204 (3) (b) of the statutes is created to read:

1 196.204 (3) (b) The commission shall promulgate rules that require the  
2 minimum accounting and reporting requirements under par. (a) that apply to  
3 transactions between small telecommunications utilities, as defined in sub. (1r) (a)  
4 5., and affiliated interests, as defined in s. 196.52 (1), to be consistent with the  
5 requirements under 47 CFR 32.27.

\*\*\*NOTE. As noted above, why create a special definition for "affiliated interest"?  
Would it be okay to refer to an affiliate, without a definition, instead?

Conform

6 SECTION 33. 196.219 (1) (c) of the statutes is created to read:

7 196.219 (1) (c) "Wholesale services" include preordering, ordering and  
8 provisioning, maintenance and repair, network performance, unbundled elements,  
9 operator services and directory assistance, system performance, service center  
10 availability, billing, and any other service that the commission specifies by order.

11 SECTION 34. 196.219 (3) (p) of the statutes is created to read:

12 196.219 (3) (p) Fail to provide wholesale services to another  
13 telecommunications provider on the same terms and conditions that the  
14 telecommunications utility or telecommunications provider provides to itself or to  
15 any of its affiliates.

16 SECTION 35. 196.219 (3m) of the statutes is created to read:

17 196.219 (3m) WHOLESALE SERVICE STANDARDS. (a) In this subsection:

18 1. "Repeat trouble report" means a trouble report by a wholesale customer who  
19 has previously made a trouble report regarding the same wholesale service.

20 2. "Trouble report" means a report to a telecommunications provider by a  
21 wholesale customer about a problem regarding a wholesale service provided by the  
22 telecommunications provider.

(b) No later than the first day of the 4th month beginning after the effective date of this paragraph .... [revisor inserts date], the commission shall, by order, establish nondiscriminatory standards that, except as provided in par. (d), require a telecommunications provider to do all of the following:

1. Provision wholesale services and related facilities in a timely manner.
2. Repair wholesale service outages in a timely manner.
3. Minimize the frequency of trouble reports, including trouble reports within 30 days after initiating a wholesale service.
4. Minimize the frequency of repeat trouble reports.

(c) The order under par. (b) may require a telecommunications provider that fails to comply with the order to make payments to another telecommunications provider that is affected by the failure to comply or to the commission in amounts and according to schedules that are specified in the order. The commission may use the payments for any purpose determined by the commission relating to maintaining or improving telecommunications service quality, including compensating persons who are affected by the failure to comply with the order.

(d) The commission may, upon its own motion or a petition from an interested person, issue an order exempting a telecommunications provider from the order or any requirement of the order issued under par. (b), or imposing a requirement that is less stringent than a requirement of the order issued under par. (b), if the commission finds, after notice and hearing, that an order under this paragraph is in the public interest and the telecommunications provider that is the subject of the order has not violated this section or any of the following:

1. A provision of the federal Telecommunications Act of 1996 relating to wholesale service.

*the order issued under  
par. (b) or any other  
requirement of*

1           2. A regulation or order issued under the federal Telecommunications Act of  
2           1996 relating to wholesale service.

3           3. An interconnection agreement approved by the commission.

4           (e) After the commission issues the order under par. (b), the commission may  
5           promulgate rules that implement the requirements of this subsection.

6           **SECTION 36.** 196.37 (2) of the statutes is amended to read:

7           196.37 (2) If the commission finds that any measurement, regulation, practice,  
8           act or service is unjust, unreasonable, insufficient, preferential, unjustly  
9           discriminatory or otherwise unreasonable or unlawful, or that any service is  
10          inadequate, or that any service which reasonably can be demanded cannot be  
11          obtained, the commission shall determine and make any just and reasonable order  
12          relating to a measurement, regulation, practice, act or service to be furnished,  
13          imposed, observed and followed in the future. An order under this subsection against  
14          a telecommunications provider may require the telecommunications provider to  
15          make payments in amounts specified in the order to persons affected by the  
16          measurement, regulation, practice, act, or service or to the commission. The  
17          commission may use any payment received under this subsection for any purpose  
18          determined by the commission relating to maintaining or improving  
19          telecommunications service quality, including compensating persons who are  
20          affected by the measurement, regulation, practice, act, or service.

21           **SECTION 37. Nonstatutory provisions.**

22           (1) RULES DEFINING "EFFECTIVE COMPETITION."

23           (a) *Emergency rules.* The public service commission shall use the procedure  
24          under section 227.24 of the statutes to promulgate the rules required under sections  
25          196.025 (6) (b) 4., 196.195 (1g), and 196.196 (1) (em) 3. of the statutes, as affected by

INSERT 29-20 ✓

1 this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency  
2 rules shall remain in effect until the date on which the permanent rules take effect.  
3 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the public service  
4 commission is not required to provide evidence that promulgating an emergency rule  
5 under this paragraph is necessary to preserve the public peace, health, safety, or  
6 welfare and is not required to provide a finding of emergency for a rule promulgated  
7 under this paragraph.

8 (b) *Proposed permanent rules.* The public service commission shall submit in  
9 proposed form the rules required under sections 196.025 (6) (b) 4., 196.195 (1g), and  
10 196.196 (1) (em) 3. of the statutes, as affected by this act, to the legislative council  
11 staff under section 227.15 (1) of the statutes no later than the first day of the 7th  
12 month beginning after the effective date of this paragraph.

\*\*\*\*NOTE: Is the above deadline (approximately 6 months) okay?

13 (2) PROPOSED ACCOUNTING RULES FOR SMALL TELECOMMUNICATIONS UTILITIES. The  
14 public service commission shall submit in proposed form the rules required under  
15 sections 196.204 (3) (b) of the statutes, as created by this act, to the legislative council  
16 staff under section 227.15 (1) of the statutes no later than the first day of the 4th  
17 month beginning after the effective date of this subsection.

### 18 SECTION 38. Initial applicability.

19 (1) The treatment of section 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em)  
20 1., and (g), and (7) of the statutes first applies to changes in telecommunications  
21 services made on the effective date of this subsection.

22 (2) The treatment of section 196.196 (6) (b) of the statutes first applies to  
23 reports made on the effective date of this subsection.

(3) The treatment of section 196.196 (6) (c) of the statutes first applies to orders made on the effective date of this subsection.

(4) The treatment of section 196.37 (2) of the statutes first applies to orders issued on the effective date of this subsection.

**SECTION 39. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 100.207 (3) (a) and (d), (3m), (5), (6) (b) 1., (c), (em) 1., and (g), and (7) of the statutes and SECTION 38 (1) of this act take effect on the first day of the 10th month beginning after publication.

**(END).**



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4912/lins  
MDK.....

INSERT TO 2-2:

1  
2 ~~2~~ providing an exemption from rule-making procedures; ✓

INSERT TO 2A:

3  
4 ~~2~~ ; and 10) requires the PSC to define "effective competition" for purposes of current  
5 law regarding deregulation of telecommunications providers ✓

INSERT TO 4A:

***Small business rates***

Under current law, as noted above, a price-regulated telecommunications utility is subject to certain restrictions regarding rate increases. This bill creates an exception to these restrictions for "small business rates" which the bill defines as rates for standard business access lines and usage by small businesses with no more than ~~3~~ <sup>three</sup> access lines. \*

Under the bill, the PSC must investigate whether to allow price-regulated telecommunications utilities, including large price-regulated telecommunications utilities, to increase small business rates in geographic areas specified by the PSC. The PSC must complete the investigation no later the first day of the 13th month beginning after the bill's effective date. The PSC may allow such increases only if, as a result of the investigation, the PSC determines that effective competition exists in a geographic area. The PSC must promulgate rules defining "effective competition". If the PSC allows such rate increases, a price-regulated telecommunications utility may petition the PSC to increase rates. The PSC must grant the petition if it includes a statement that the price-regulated telecommunications utility agrees to allow customers to terminate contracts, as described below. However, the PSC may not grant a petition until after the PSC's order regarding wholesale service standards (which is described below) goes into effect. \*

If the PSC grants a petition by a price-regulated telecommunications utility, the bill allows a customer who has a contract for small business rates with the utility to terminate the contract without penalty. However, a customer may terminate such a contract only if the customer enters into a new contract for small business rates with another telecommunications provider. In addition, the right to terminate under the bill expires one year after the effective date of the PSC's order granting the price-regulated telecommunications utility's petition.

INSERT 5-A:

Under current law, telecommunications providers are subject to certain prohibitions regarding their treatment of consumers and other telecommunications providers. This bill creates an additional prohibition on failing to provide wholesale

↓

services to another telecommunications provider on the same terms and conditions that the telecommunications provider provides to itself or to any of its affiliates. "Wholesale services" are defined <sup>in the bill</sup> to include preordering, ordering, provisioning, maintenance and repair, network and system performance, unbundled elements, operator services and directory assistance, service center availability, and billing. In addition, the bill allows the PSC to issue an order that specifies additional services that are wholesale services. <sup>and</sup>

The bill also requires the PSC to issue an order that establishes nondiscriminatory standards that require a telecommunications provider to provision wholesale services and related facilities, and repair wholesale service outages, in a timely manner. The order must also require a telecommunications provider to minimize the number of reports to the provider regarding problems with its wholesale service. In addition, the order may require a telecommunications provider that fails to comply with the standards to make payments to another telecommunications provider who is affected by the failure, or to the PSC, in amounts and according to schedules specified in the order. The PSC may use any payment that it receives for any purpose determined by the PSC relating to maintaining or improving telecommunications service quality, including compensating persons who are affected by the failure to comply with the PSC's order. The PSC must issue the order no later than the first day of the <sup>fourth</sup> 4th month beginning after the bill's effective date.

In addition, the bill allows the PSC to issue an order that exempts a telecommunications provider from the order described above or that imposes less stringent requirements. The PSC may issue such an order only upon finding that such an order is in the public interest and that the telecommunications provider that is the subject of the order has not violated any of the following: 1) the order described above; 2) the prohibitions under current law regarding treatment of consumers and other telecommunications providers; 3) any provision of the federal Telecommunications Act of 1996, or an order or regulation issued under that act, relating to wholesale service; or 4) interconnection agreement approved by the PSC.

**INSERT 5B:**

Under current law, the PSC may order a person subject to its authority to take appropriate action if the PSC determines that the person acted in a manner that is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise unreasonable or unlawful. The PSC may also issue such an order if the PSC finds that service is inadequate or cannot reasonably be obtained.

Under this bill, if the PSC issues an order described above against a telecommunications provider, the PSC may also require the telecommunications provider to make payments specified in the order to persons affected by the telecommunications provider's act or service or to the PSC. The PSC may use any payment that it receives for any purpose determined by the PSC relating to maintaining or improving telecommunications service quality, including compensating persons who are affected by the telecommunications provider's act or service.

1

INSERT 6A:

Current law prohibits a telecommunications utility from subsidizing the activities of affiliates that are not subject to the PSC's authority. This prohibition is referred to as the prohibition on "cross subsidization." The prohibition does not apply to the retained earnings of a telecommunications utility.

\* This bill creates <sup>two</sup> exceptions to the prohibition on cross subsidization for small telecommunications utilities. The bill defines "small telecommunications utility" as a telecommunications utility that has less than 50,000 access lines in use in the state. For a telecommunications utility that is in a holding company, the access lines of all other telecommunications utilities in the holding company are counted in determining whether the telecommunications utility is a small telecommunications utility. (The access lines of any wireless telecommunications provider in the holding company are not counted.)

The first exception to the prohibition is that a small telecommunications utility is allowed to guarantee a loan for an affiliate if the loan is made before the first day of the 60th month beginning after the bill's effective date. Also, the purpose of the loan must be to partially or completely fund the cost of equipment that the affiliate will use to provide telecommunications service, cable television service, or both. The second exception to the prohibition is that a small telecommunications utility may allow an affiliate free use of the utility's intangible assets, including its name, goodwill, patents, and trademarks. However, the affiliate must use the intangible asset to provide telecommunications service, cable television service, or both. In addition, neither of the bill's <sup>two</sup> exceptions applies unless the small telecommunications utility waives its right under current law to object to the PSC allowing a competitor <sup>to</sup> provide telecommunications service in the municipality served by the utility.

A small telecommunications utility that takes advantage of either of the bill's exceptions is subject to additional requirements if certain actions occur under the federal Telecommunications Act of 1996. The federal act allows certain rural telecommunications utilities to petition the PSC to suspend or modify the application of the act's interconnection requirements. Also, certain rural telecommunications utilities are exempt from the interconnection requirements until another telecommunications provider requests interconnection and the PSC determines to terminate the exemption.

\* Under this bill, if a small telecommunications utility guarantees a loan for an affiliate under the bill's first exception and the utility petitions the PSC to suspend or modify the federal act's interconnection requirements, the affiliate must annually pay the utility an amount equal to one-quarter of ~~one percent~~ <sup>1%</sup> of the outstanding balance of the loan. The affiliate must also make such payments if another telecommunications provider requests interconnection and the PSC determines not to terminate the small telecommunications utility's exemption under the federal act. In addition, if a small telecommunications utility allows an affiliate free use of an intangible asset under the bill's <sup>second</sup> exception and the utility petitions the PSC to suspend or modify the federal act's interconnection requirements, the affiliate must

Ins 6A cont

1%

annually pay the utility an amount equal to one-quarter of ~~one percent~~ of the affiliate's gross sales. The affiliate must also make such payments if another telecommunications provider requests interconnection and the PSC determines not to terminate the small telecommunications utility's exemption under the federal act.

Current law also requires the PSC to establish the minimum accounting and reporting requirements that are necessary for the PSC to, among other things, enforce the prohibition on cross subsidization. Under this bill, the accounting and reporting requirements that apply to transactions between small telecommunications utilities and their affiliates must conform with certain federal accounting and reporting requirements. The PSC must promulgate rules regarding such requirements.

1

#### INSERT 6B

\* The bill requires the PSC to investigate competition among intrastate telecommunications providers, including those that provide Internet access service, during the ~~5~~<sup>five</sup> year period after the bill's effective date and to submit a report to the legislature that assesses the relationship between the regulatory and competitive status of such providers. The report must assess specified aspects of such competition, including: 1) the number of different providers in different product and geographic markets; 2) the prices of telecommunications services offered by the providers; 3) the provider's market power; 4) the different levels of regulation applicable to the providers; 5) the different retail service quality credit plans offered by the providers; 6) the barriers to effective competition; 7) the number and types of complaints by residential customers regarding the providers; and 8) certain information regarding the unbundled network elements, interconnection, and collocation offered by the providers.

The report must also include proposals for legislation recommended by the PSC, including recommendations for remedying anticompetitive behavior of intrastate telecommunications providers. If the proposals do not include requiring providers to structurally separate wholesale and retail operations into independently operated affiliates, the report must indicate the PSC's reasons for not making such a recommendation.

#### *Definition of "effective competition"*

\* Under current law, the PSC is allowed to suspend certain requirements regarding telecommunications providers in order to establish a degree of regulation that is less than the degree under current law. The PSC may suspend the requirements if, after a hearing, the PSC makes certain determinations, including determining that effective competition exists in a market for telecommunications services and that the competition justifies a lesser degree of regulation. Current law does not define "effective competition". This bill requires the PSC to promulgate rules that provide such a definition.

2

#### INSERT 14-9:



INS 14-9

1 The commission shall complete the investigation no later than the first day of the  
2 13th month beginning after the effective date of this subdivision ... [revisor inserts  
3 date].

4 **INSERT 29-20:**

5 **SECTION 1.** 227.01 (13) (cm) of the statutes is created to read:

6 227.01 (13) (cm) Is an order under s. 196.196 (6) (f) or (h) 2., 196.1995 (5) (a),  
7 or 196.219 (1) (c) or (3m) (b).

(end ins)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

01-4912/1dn  
MDK:.....

Senator Jauch:

Please review this version carefully to make sure that it achieves your intent.

Note that this version creates an exception to the definition of "rule" in s. 227.01 (13) (cm) to clarify that the PSC need not use rule-making procedures for the orders under proposed ss. 196.196 (6) (f) and (h) 2., 196.1995 (5) (a), and 196.219 (1) (c) and (3m) (b). Note that there is no need to create an exception for granting of petitions for small business rate increases under proposed s. 196.196 (1) (em) 2., because there is already an exception for actions that fix or approve rates. See s. 227.01 (13) (n), stats. Also, because an order under proposed s. 196.219 (3m) (d) would concern only an individual telecommunications provider, it does not have general application and, therefore, does not satisfy the definition of "rule" under s. 227.01 (13) (intro.). As a result, there is no need to create an exception from the definition of "rule" for that order.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4912/1dn  
MDK:jld/lmlh/cmh/cjs:pg

February 19, 2002

Senator Jauch:

Please review this version carefully to make sure that it achieves your intent.

Note that this version creates an exception to the definition of "rule" in s. 227.01 (13) (cm) to clarify that the PSC need not use rule-making procedures for the orders under proposed ss. 196.196 (6) (f) and (h) 2., 196.1995 (5) (a), and 196.219 (1) (c) and (3m) (b). Note that there is no need to create an exception for granting of petitions for small business rate increases under proposed s. 196.196 (1) (em) 2., because there is already an exception for actions that fix or approve rates. See s. 227.01 (13) (n), stats. Also, because an order under proposed s. 196.219 (3m) (d) would concern only an individual telecommunications provider, it does not have general application and, therefore, does not satisfy the definition of "rule" under s. 227.01 (13) (intro.). As a result, there is no need to create an exception from the definition of "rule" for that order.

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**Barman, Mike**

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**From:** Korbitz, Adam  
**Sent:** Tuesday, February 19, 2002 1:43 PM  
**To:** LRB.Legal  
**Subject:** LRB 4912

Sen. Jauch requests that you jacket LRB 4912/1 for introduction in the Senate and send the jacket to our office this afternoon. Thank you.